APPENDIX

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 8027.

NICHOLAS J. CURTIS,
Appellant,
vs.
UTAH FUEL COMPANY, et al.

Coram: Biggs and Maris, JJ.

Upon consideration of appellant's application,

It is ORDERED that the time for filing appellant's brief in the above entitled case be, and the same is hereby extended to August 1, 1942.

By the Court,

MARIS,

Circuit Judge.

May 29, 1942.

Statutes and Authorities

Practice. Rule 27. 2. (f) of the Rules of Practice and procedure of the United States Supreme Court.

The statutes and authorities are long.

N. J. Curtis, Plaintiff.

Article 1, Section 9. The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it;

Article IV. of the Art. in Addition to and Amendment of the Constitution.

The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seisures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

Article (V) . . . nor be deprived of life, liberty, or property without due process of law.

. . .; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE (VIII). Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. See the certified Record of the plot as certified by the Clerk of Salt Lake County, Utah.

Article XIV. Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person the equal protection of the laws.

See the facts as stated in the Complaint. And particularly the criminality of the defendants as certified and submitted to the court below, in the exhibits submitted.

The Acts of Congress invoked by plaintiff. See citations on page three of the Complaint.

Title 8, U. S. C. A., Section 41. Equal rights under the law.—All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. (R. S. Sec. 1977.)

Section 43. Civil Action for deprivation of rights.—Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R. S. Sec. 1979.)

Section 47. Conspiracies;

Please see the Section in the Code. Too long to copy it. . . .; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to

be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. Sec. 1980.)

Title 15, U. S. C. A., Sec. 1.—Trusts, etc. in restraint of trade illegal; penalty.—Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. . . .

Section 3. Trusts in Territories of District of Columbia illegal; penalty.—Combination a misdemeanor. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal.

Section 4. Jurisdiction of Courts, procedure.

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7, inclusive, or section 15 of this chapter. July 2, 1890, c. 647, Sec. 4, 26 Stat. 209; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167.

Section 5. Bringing in Additional parties.

Whenever it shall appear to the court before which any proceeding under section 4 of this chapter may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof. (July 2, 1890, c. 647, Sec. 5, 26 Stat. 210.)

Section 15.

Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fees. (Oct. 15, 1914, c. 323, Sec. 4, 38 Stat. 731.)

Section 24. Liability of directors and agents of corporations.

Whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, . . . (Oct. 15, 1914, c. 323, Sec. 14, 38 Stat. 736.)

Title 28, U. S. C. A., Section 41. Subdivisions (1) c, (8), (12), (14), (17), (23);

Chapter 4. Section 103. When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. R. S., Sec. 731; Mar. 3, 1911, c. 231, Section 42. . . .)

Section 725. Laws of States as rules of decisions.— The laws of the several States, except where the Constitution treaties, or Statutes of the United States otherwise require or provide, shall be regarded as rules of decisions in trials at common law, in the courts of the United States, in cases where they apply. (R. S. Sec. 721.)

Section 729.

See the Section as set out in full on pp. 8-9 of the printed parts of the Record in this Court.

In the operation of the conspiracy alleged in the Complaint and the two supplementals filed, the defendants in the suit violated also the following Sections of Title 18, U. S. C. A. Section 52. (Criminal Code, Section 20.)

Depriving citizen of civil rights under color of State Laws. Whoever, under color of any law, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any right, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to

different punishments, pains, or penalties, on account of such an inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both. (R. S. Sec. 5510; Mar. 4, 1907, c. 321, Sec. 20, 35 Stat. 1092.)

Section 54. Conspiracy under the Statute defined.—A conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end. The word "corrupt" in the sense used, means "unlawful." U. S. v. Johnson, 26 F. 682.

Section 54. (Criminal Code, Section 21.) Conspiring to prevent officer from performing duties. If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than $5,000, or imprisoned not more than six years, or both. (R. S. Sec. 5518; Mar. 4, 1909, c. 321, Sec. 21, 25 Stat. 1092.)

Section 88. Conspiring to commit offense against United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United

States in any manner or for any purpose, and one or more of such parties do any act to effect the object of such conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both. (R. S. Sec. 5440; May 17, 1879, c. 8, 21 Stat 4; Mar. 4, 1907, c. 321, Sec. 37, 35 Stat. 1096.)

The Statute includes any conspiracy for purpose of impairing, obstructing or defeating lawful function of any department of the Federal Government, and it is not essential that the conspiracy contemplate or result in financial loss to government. Langer v. U. S. (C. C. A., N. D., 1935), 76 Fed. (2nd) 817. The statute is to be strictly construed. Rorres v. Swope, 25 Fed. Supp. 483.

The Articles of the Constitution, Sections of the Code of Laws of the United States, and "Notes" set out herein and above and below are not intended to tire the Court out, it has to be done in order to show that the suit is one within the inhibition of the law found in Section 103 of Title 28.

NOTE 46. One who aids or abets a conspiracy after its formation, with understanding of its purpose, becomes a party to it. Burkhardt v. United States, 13 Fed. (2nd) 841.

One who, with knowledge of conspiracy, aids in carrying out the unlawful design, is equally guilty with conspirators. Simpson v. United States, 11 F. (2nd) 592, certiorari denied, 46 S. Ct. 488, 271 U. S. 674, 70 L. Ed. 1145.

NOTE 47. It is immaterial at what time a defendant joined a criminal conspiracy, where it is shown that he joined with others in carrying out the common design. United States', 253 F. 212, affirmed Schenck v. U. S., 39 S. Ct. 247, 249 U. S. 47, 63 L. Ed. 470.

One joining a conspiracy, after its formation, by con-

tributing to its carrying out with knowledge thereof, is liable under this section. Rudner v. U. S., 281 F. 516, certiorari denied, 43 S. Ct. 95, 260 U. S. 734, 67 L. Ed. 487.

Any one who, after a conspiracy is formed, and who knows of its existence, joins therein, becomes a party thereto from that time, Hagen v. United States, 268 F. 344; United States v. Cassidy, citing U. S. v. Babcock, Fed. Case No. 14, 487; U. S. v. Barrett, 65 F. 62; U. S. v. Howell, 56 F. 21; U. S. v. Sacia (D. C. N. J. 1880), 2 F. 754.

One who comes into a conspiracy after it has been formed, with knowledge of its existence, and with a purpose of forwarding its design, is equally as guilty as though he had participated in its original formation. Nyquist v. U. S., 2 F. (2d) 504, certiorari denied, 45 S. Ct. 508, 267 U. S. 606, 69 L. Ed. 810; Thomas v. U. S., 156 F. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

All who participated in unlawful acts committed in furtherance of a conspiracy are equally liable as co-conspirators, regardless of whether they were original parties to the conspiracy or not. Calcutt v. Gerrig (C. C. A. Tenn. 1921), 271 F. 220.

NOTE 49. Where the existence of an unlawful conspiracy is proved, an overt act by one of the parties thereto becomes the act of all, and they are all alike guilty. Jung Quey v. U. S., 222 F. 766; U. S. v. Noblom, Fed. Cas. No. 15,896; U. S. v. Butler, Fed. Case No. 14,700; Hamburg American Steam Packet Co. v. U. S., 250 F. 747, Certiorari denied; U. S. v. Bergdoll, 27 F. 498, writ of error dismissed; Bergdoll v. U. S., 27 F. 404, and certiorari denied, 42 S. Ct. 589, 259 U. S. 585, 66 L. Ed. 1076; Grayson v. U. S., 272 F. 553, certiorari denied, 42 S. Ct. 49, 257 U. S. 637, 66 L. Ed. 409; Vannata v. U. S., 289 F. 37; Chew v. U. S., 9 F. (2d) 348.

NOTE 151. A conspiracy to corruptly obstruct and impede the due administration of justice in a court of the United States in a civil action between private parties in violation of R. S. Sec. 5399 (embodied in Section 241 of this title), was a conspiracy to commit an offense against the United States within the meaning of R. S. Sec. 5440, embodied herein, Wilder v. U. S., 143 F. 433, 74 C. C. A. 567, writ of certiorari denied, 27 S. Ct. 787, 204 U. S. 674, 51 L. Ed. 674.

A conspiracy could be formed to procure United States attorney (Judge) to dismiss prosecution. Felder v. United States, 9 F. (2d) 872, certiorari denied, 46 S. Ct. 348, 270 U. S. 648, 7 L. Ed. 779.

NOTE 153. Perjury and subornation.—Perjury in violation of Code of District of Columbia, see note 134 under this section (A crime against United States is committed. . . .) Fletcher v. U. S., 42 App. D. C. 53, 511; citing U. S. v. Colla, 37 App. D. C. 432.

NOTE 157.—Use of mails to defraud.—The use of mails in a scheme to defraud is made a crime by Section 338 of this title, and it is the depositing in or the taking out of a letter pursuant to such scheme that constitutes the offense, and a conspiracy to commit the offense is a confederating together of two or more persons to carry out a scheme of that kind in that way. Marrin v. U. S., 167 F. 951, 93 C. C. A. 351, certiorari denied, 32 S. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

NOTE 201. Jurisdiction and Venue.—

NOTE 203. Place where overt act committed.

NOTE 210. Last Overt Act as controlling (the limitation).

NOTE 201. Jurisdiction and Venue.—In general.—Where an indictment charges a conspiracy formed in each of two federal districts to commit a crime and overt acts committed in each district, it is not essential to jurisdiction in one district that all defendants should have participated in overt acts in that district, but it is sufficient if some of them did. Rudner v. U. S., 281 F. 516, certiorari denied, 43 S. Ct. 95, 200 U. S. 737, 67 L. Ed. 487. See also Ireland v. Henkle, 179 F. 993; Daeck v. U. S., 25 F. 566; Grayson v. U. S., 272 F. 553, cer. d. 42 S. Ct. 49, 257 U. S. 637, 66 L. Ed. 409.

Where some of the defendants, charged with criminal conspiracy in restraint of interstate commerce in violation of anti-trust Act, Sec. 1 (Section 1 of Title 15, Commerce and Trade), were corporations of other States, but the conspiracy was in part carried on within a district, and one of the defendants were inhabitant of district and found there the court of that district had jurisdiction. United States v. National Malleable & Steel Casting Co., 6 F. (2d) 40.

NOTE 202. A conspiracy to do an unlawful act, formed in one district, and in part executed there, is punishable in that district, though it was consummated in other parts of the United States. U. S. v. Noblom, Fed. Cas. No. 15, 896. See also U. S. v. Howell, 56 F. 21.

NOTE 203.—Place where overt act committed.—A prosecution for conspiracy under this section may be maintained in any federal district where an overt act in furtherance of the conspiracy is committed. Morris v. U. S., 7 F.

(2d) 785, certiorari denied, 46 S. Ct. 205, 270 U. S. 640, 70 L. Ed. 775; Hyde v. U. S., 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114; Wing v. U. S., 280 F. 112; Tillinghas v. Richards, 225 F. 105, 96 C. C. A. 307; U. S. v. Rindsopf, 6 Biss. 259, 27 Fed. Cas. No. 16, 165.

The venue of conspiracy may be laid wherever an overt act is committed, under this section as well as at common law, though some of the indicted defendants were never in that district. Easterday v. McCarthy, 256 F. 651, affirmed U. S. v. McCarthy.

A prosecution for conspiracy to impede administration of justice under this section is properly brought against all conspirators in the division and district where the overt act is performed, regardless of the place where the conspiracy was formed. Harrington v. U. S., 267 F. 97.

NOTE 207. Limitations.—In general.—

NOTE 208. Time from which statute runs in general.—A conspiracy continues, so far as the Statute of Limitations is concerned, so long as there is a course of conduct in violation of law to effect its purpose. Ryan v. U. S., 216 F. 13, 132 C. C. A. 257, cer. d. Id., 34 S. Ct. 603, 232 U. S. 726, 58 L. Ed. 816.

NOTE 209.—Overt Acts as controlling in general.—Any act in execution of the original plan may be regarded as a renewal of the original combination, and may be prosecuted against any one participating, personally or through others. U. S. v. Reddin.

Title 18, Sec. 231. (Criminal Code, Sec. 125.) Perjury.—Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered,

that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than $2,000, and imprisoned not more than five years. (R. S. Sec. 5392; Mar. 4, 1909, c. 321, Sec. 125, 35 Stat. 1111.)

Section 232. (Criminal Code, Section 126.) Subornation of perjury.—Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in Section 231 of this title prescribed. (R. S. Sec. 5393; Mar. 4, 1909, c. 321, Section 126, 35 Stat. 1111.)

Section 237. Whoever, directly or indirectly give or offer, or cause to be given or offered, any money, property, or value of any kind, or any promise or agreement therefore, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision, shall be fined not more than $20,000, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States. (R. S. Sec. 5449; Mar. 4, 1909, c. 321, 25 Stat. 1112.)

Petitioner's Memo. Please see page 14 of the Record of Pleadings in the first Appeal of the case, pages 33-34 of the Complaint.

On the Return Day of their Motion to Dismiss my first Complaint in the court below against the defendant Utah Fuel Company, on the 11th day of December, 1937, in the presence of: Hon. Phillip Forman, Judge, sitting as a Court for the Hearing of Motions; 2. Hon. Charles S. Chevrier, and Benjamin F. Haven, Deputy Clerks of

the Court below; Two Deputy Marshals attending the Court; and 5. One or two attorneys, the defendant H. Collin Minton, Jr., argued to Judge Phillip Forman as follows: Please see the Parts of the argument on the pages cited above here.) William H. Folland is a justice of the State Supreme Court of the State of Utah and the proceeding would be against that Judge. Judge Phillip Forman.

They put him there for putting him (pointing your petitioner) out of the way.

H. Collin Minton, Jr. Yes, they do that. They do those things. They will do the same thing with you. Dismiss his case and put him in. They will not stand to see him back. . . .

Judge Phillip Forman. I refuse to sustain you. Just now you said that they put him there for putting him out of the way and now you are asking me to put him in. I refuse to sustain you. We cannot put him in. We have papers here, and we cannot put him in. He is the best customer here.

H. Collin Minton, Jr. I just tell you these because I know you. Etc.

Section 242. (Criminal Code, Sec. 136.)

Conspiring to intimidate party, witness, or juror.—If two or more persons conspire to deter by force, intimidation, or threat any party or witness in any court of the United States, or in any examination before a United States Commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified,

. . . each of such persons shall be fined not more than $5,000, or imprisoned not more than six years, or both. (R. S. Sec. 5406; Mar. 4, 1909, c. 321, Section 136, 35 Stat. 1113.) From U. S. C. A. 1925.

Section 338. (Criminal Code, Sec. 215.)

Using mails to promote frauds; Counterfeit money. Whoever having devised, or intending to devise any scheme or artifice to defraud, . . . (R. S. Sec. 5480; Mar. 2, 1889, c. 393, Sec. 1, 25 Stat. 873; Mar. 4, 1909, c. 321, Sec. 215, 35 Stat. 1130.)

Section 443. Kidnaping. Please see the section.

Sections 444 and 445. Holding or Returning Persons to Peonage; and same, obstructing enforcement of law. Please see 2nd Supp. Complaint.

Section 550. (Criminal Code, Section 332.)

"Principals" defined. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal. (R. S. Secs. 5323, 5427; Mar. 4, 1909, c. 321, Sec. 332, 35 Stat. 1152.)

Title 28, Ch. 10, Section 371. (Judicial Code, Section 256, amended.)

Exclusive Jurisdiction of United States Courts.

The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States.

First. Of all crimes and offenses cognizable under the authority of the United States. Please see the section.

Title 18, U. S. C. A. Sec. 408. . . . Whoever shall receive, conceal, store, barter, sell, or dispose of any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both. (Oct. 29, 1919, c. 89, Secs. 1 to 5, 41 Stat. 324.)

These being the facts and the laws in the case under consideration, the law found in the Act of Congress of Mar. 3, 1911, c. 231, Sec. 42, 36 Stat. 1100; Section 103, U. S. C. A. is the most suitable law of the United States to carry into effect the jurisdiction of the Court below. (R. S. Sec. 722.) The statute (103, U. S. C. A., Title 28) is mandatory. Statutes are mandatory, except for the established rules for their interpretation. Suydam v. Broadnu, 14 Pet. 677.

MEMORANDUM.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
vs.
UTAH FUEL COMPANY, a corporation, et als.,
Defendants.

Memorandum.
Civil No. 728.

APPEARANCES:

NICHOLAS J. CURTIS, ESQ., Attorney pro se.

ADDISON P. ROSENKRANS, ESQ., Attorney for Defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans.

MESSRS. MINTON & ROGERS, BY: H. COLLIN MINTON, JR., ESQ., Attorneys for Defendants, Utah Fuel Company, Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe (Charles R. Mabey), W. D. Sutton.

CAROL C. JOHNSON, ESQ., Attorney pro se.

WALKER, District Judge:

Memorandum

MOTION NO. 1.

The motion of the defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans is for an order striking the complaint filed by the plaintiff and it is for an order quashing the summons issued thereon.

RULING.

The complaint which the plaintiff entitles "Declaration" states that Nicholas J. Curtis is a citizen and subject of the Kingdom of Greece, and a resident of Ridgewood, Bergen County, New Jersey, that the matter in controversy exceeds, exclusive of interest and costs the sum of $3,000.00, and "Jurisdiction founded on existence of several federal questions and amount in controversy."

The second, twenty-first and twenty-second counts name the aforesaid defendants and relate to money due and owing for work, labor and services performed.

It is difficult to determine from a reading of the complaint, the nature of the action which the plaintiff attempts to allege, but whether or not jurisdiction arises under the Constitution or laws of the United States or treaties made, or which shall be made under their authority[1] or rests on the fact that the plaintiff is a subject of a foreign country and the defendants in questions are citizens of the State of New Jersey[2], the amount in controversy must exceed, exclusive of interest and costs, the sum or value of $3,000.00.

The counts hereinbefore referred to contain specific allegations as to the amount in controversy and said

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[1] Title 28, U. S. C. A., Section 41, Subdivision 1(a).
[2] Title 28 U. S. C. A., Section 41, Subdivision 1(c).

specific allegations limit the general allegations which appear in other parts of the complaint and establish the sum of $347.92, exclusive of interest and costs as the amount in controversy between the plaintiff and the defendants, NICHOLAS J. PAPPAS, HELEN N. PAPPAS, HARRY SUSSMAN and WILLIAM V. ROSENKRANS. Therefore: this court does not have jurisdiction as to said defendants, and their motion to strike the complaint and to quash the service of summonses is granted as to each of them. In fact, no matter how we struggle with the complaint there seems to be no conceivable reason why William V. Rosenkrans is made a party defendant.

The court could also grant the relief requested by the defendants, NICHOLAS J. PAPPAS, HELEN N. PAPPAS and HARRY SUSSMAN on another ground; the plaintiff is attempting to try in this court as to them a matter already adjudicated by a state court.

MOTION NO. 2.

The defendants, DR. FREDERICK DUNN, DR. A. C. CALLISTER, DR. E. D. SMITH, CHARLES E. MAYBE (CHARLES R. MABEY) and WILLIAM D. SUTTON move to quash service of the summonses made upon them. The record shows that they were served by Gilbert Mecham, United States Marshal for the District of Utah at Salt Lake City, Utah, with the exception of Dr. Frederick Dunn, who was served at Springfield, Utah.

RULING.

Except as provided in Sections 113 to 118 of Title 28 U. S. C. A.[1], no civil suit shall be brought in any district

[1] Exceptions do not apply.

court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of either the plaintiff or the defendant[2].

The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able *there* to secure the service of process on the defendants.

The motion is granted and service of summons on DR. FREDERICK DUNN, DR. A. C. CALLISTER, DR. E. D. SMITH, CHARLES E. MAYBE (CHARLES R. MABEY) and WILLIAM D. SUTTON is quashed.

MOTION NO. 3.

The defendant, Carol C. Johnson, a citizen and resident of New York moves to quash service of the summons made upon him. The record shows that he is a citizen of the State of New York and he was served by Leo Lowenthal, United States Marshal for the Southern District of New York.

RULING.

Except as provided in Sections 115 to 118 of Title 28 U. S. C. A.[1] no civil suit shall be brought in any district

[2] Title 28, U. S. C. A. 112.

[1] Exceptions do not apply.

court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the *district of the residence of either the plaintiff or the defendant*[2].

The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able *there* to secure the service of process on the defendant.

The motion is granted and service of summons on CAROL C. JOHNSON is quashed.

MOTION NO. 4.

Utah Fuel Company moves to strike the complaint on the grounds more particularly set forth in its notice of motion.

Motion Addressed To:	*Ruling*
1st Count	Denied.
2nd Count	Granted.
Paragraphs 36 to 39, inclusive, Counts 21 and 22	Granted.
7th Count	Denied.
8th Count	Denied.
9th Count	Denied.
10th Count	Denied.
11th Count	Denied.
12th Count	Denied.

[2] Title 28, U. S. C. A. 112.

Memorandum

13th Count	Denied.
14th Count	Denied.
15th Count	Denied.
16th Count	Denied.
17th Count	Denied.
18th Count	Denied.
19th Count	Denied.
20th Count	Denied.
23rd Count	Granted.
24th Count	Granted.
25th Count	Denied.

MOTION NO. 5.

The plaintiff moved to submit affidavits and exhibits in opposition to the motion to dismiss. The court however, was unable to consider same because the plaintiff did not give notice of said motion as required by the Rules[1].

The necessary orders should be presented.

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[1] Rule 5, Federal Rules of Civil Procedure.

ORDER.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
vs.
UTAH FUEL COMPANY, a corporation, et als.,
Defendants.
} Civil No. 728.

SIR:

PLEASE TAKE NOTICE, that the within is a true copy of an order duly made, entered and filed in the office of the Clerk of the above-named Court on the 25th day of November, 1941.

Dated: November 29, 1941.

Yours, etc.,
CAROL C. JOHNSON, per se,
Office and P. O. Address,
68 William Street,
Borough of Manhattan,
City of New York.

TO:

NICHOLAS J. CURTIS, Plaintiff,
Appearing in Person,
106 Mansion Street,
Poughkeepsie, N. Y.

ORDER.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
vs.
UTAH FUEL COMPANY, a corporation, et als.,
Defendants.

Civil No. 728.

Upon all the pleadings and proceedings heretofore had herein and upon the motion of Carol C. Johnson for an order to quash service of summons made upon him.

NOW, therefore, it is on this 25th day of November, 1941

ORDERED, ADJUDGED and DECREED that service of summons on Carol C. Johnson is quashed.

THOMAS GLYNN WALKER,
United States District Judge,
District of New Jersey.

ORDER.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS, Plaintiff, vs. UTAH FUEL C'MPANY, a corporation, et als., Defendants.	Civil Action File No. 728. Action at Law. On Motion to Strike Complaint and Quash Summons.

Application having been made on behalf of the defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, to strike the complaint and quash the summons filed and served in the above entitled matter, so far as they are concerned, and the same having come on to be heard before Hon. Thomas G. Walker, Judge of United States District Court for the District of New Jersey, and argument having been made thereon, by Nicholas J. Curtis, appearing for himself, and by the attorney of said defendants in their behalf, and the Court having duly considered the same and being of the opinion that the Court does not have jurisdiction as to said defendants under the allegations of plaintiff's Complaint, and of the further opinion that the plaintiff is attempting to try in this court, so far as said defendants are concerned, a matter already adjudicated by a state court, and

that the motion to strike the Complaint, so far as said defendants are concerned, and to quash the service of summons on them should be granted to each of them:

It is on this twenty-eighth day of November, 1941, ORDERED that the complaint be, and hereby is, stricken, and the service of summons be, and hereby is quashed, as to said defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman, and William V. Rosenkrans.

On motion of Addison P. Rosenkrans.

THOMAS G. WALKER.

ADDISON P. ROSENKRANS,
Attorney of Defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans.

DOCKET ENTRIES.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY,

TRENTON, NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
against
UTAH FUEL COMPANY, et als.,
Defendants.

Civil No. 729.

The issues in this action having been duly brought to hearing before Hon. Thomas Glynn Walker, United States District Judge, at terms of this court held at the United States District Court, District of New Jersey, in Court Room No. 1, of the Division of said Court, at the Court House at the City of Newark, and State of New Jersey, as to the pleadings, Complaint, and Motion papers enumerated here—under as to the Motions heard before Judge Walker:

DOCKET ENTRIES.

Jan. 12, 1940. Complaint with supplement annexed thereto filed.

Docket Entries

Mar. 25, 1940. Summons issued (26 copies).

Apr. 16, 1940. Summons returned served on Utah Fuel Co. by serving its attorney on April 3rd, on Utah Fuel Co. by serving Vice President, on Mrs. Helen N. Pappas and Nicholas Pappas and William V. Rosenkrans personally April 6th, Harry Sussman, out of Dist. Sotirios Nicholaidis, "deceased" filed.

Apr. 17, 1940. Notice of Motion to Strike Complaint and Quash Summons re Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, filed.

Apr. 17, 1940. Affidavit of Service of Notice, filed.

Apr. 22, 1940. Summons Returned served on Dr. R. E. Murphy on April 8th, on W. D. Sutton, Mark Tuttal, Wm. H. Folland by serving wife; on Dr. D. E. Smith and D. O. Larson on April 9th, on Dr. Frederick Dunn, on April 11th, Dr. Samuel Wolf, Joseph Ririe and Simon Bamberger, deceased, Dr. J. C. Pauland Dr. Arthur Taylor, unknown, filed.

Apr. 22, 1940. Summons returned served on Chas. W. Kutz, personally April 6th, Louis Brownlow "not found," and Dr. Hickling, deceased, Wm. H. Fay and William J. Hazen not found, filed.

Apr. 22, 1940. Summons returned served on Carol C. Johnson, April 8th, filed.

Apr. 22, 1940. Hearing on motion to Strike Complaint and quash service of summons as to Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, Decision Reserved. Plff. submitted his part on his Opposing (Walker) Affidavit, filed and served Apr. 18, 1940.

April 23, 1940. Opposing Affidavit Opposing the Motion to

Vacate and Set Aside the Service of Summons Herein Filed by Carol C. Johnson, Defendant, filed and Served Personally.

Apr. 24, 1940. Special appearance and Notice re Utah Fuel Co. and H. Collin Minton, Jr., filed.

Apr. 24, 1940. Notice of Motion for Order Striking Complaint as to Utah Fuel Company and H. Collin Minton, Jr., filed.

Apr. 25, 1940. Notice of Motion for Order vacating and setting aside service as to Carol C. Johnson, filed.

Apr. 26, 1940. Opposing Affidavit Directed Against the Motion to Strike the Complaint herein Filed by the Defendants, H. Collin Minton, Jr., and Utah Fuel Company, filed.

Apr. 26, 1940. Certificate of Service of Copy of Opposing Affidavit to the Law Offices of Minton and Rogers and handed it to their Secretary, filed.

May 6, 1940. Hearing on Motion for Order Vacating and setting aside service of summons and complaint as to Carol C. Johnson. No appearance for the motion. Plaintiff submitted his part of the argument on his said Opposing Affidavit. Decision Reserved. (Walker)

May 6, 1940. Hearing on Motion to Strike out Complaint as to Utah Fuel Company and H. Collin Minton, Jr. Appearance: H. Collin Minton, Jr., defendant. Plaintiff in person. Short Argument submitting his part on his said Opposing Affidavit. Decision Reserved. (Walker)

May 13, 1940. Notice of Motion for commission to examine witnesses residing out of the United States, filed.

May 13, 1940. Motion and Application to Take Depositions of Parties out of State, filed.

May 13, 1940. Notice of Motion for Order Staying Proceedings, filed.

May 13, 1940. Hearing on motion to take testimony out of Country. Decision Reserved. Hearing on motion to stay proceedings of case. Decision Reserved. (Walker)

May 13, 1940. Affidavit as to fees to parties and witnesses, filed.

May 13, 1940. Notice of service of copies of applications to take depositions, filed.

May 13, 1940. Amendment to original complaint, filed.

May 13, 1940. Summons on Amendment issued.

May 20, 1940. Notice of Motion to substitute Bamberger Coal Co. in place and stead of Simon Bamberger, deceased, filed.

June 3, 1940. Summons returned served on Dr. Leslie J. Paul, Personally, and on Bamberger Coal Co. by serving Wm. D. Eldridge, Vice President, on May 22nd, on Dr. Frederick Taylor, personally May 28th, filed.

June 10, 1940. Hearing on Motion to substitute Bamberger Coal Co. in place and stead of Simon Bamberger, deceased. Called and no Opposition. No Appearance for the Defendant. Decision Reserved. (Walker)

July 1, 1940. Motion and Notice of Motion for leave to amend prayer for relief, filed.

July 1, 1940. Motion and Notice of Motion for default Judgment, filed.

July 8, 1940. Hearing on motion for leave to amend prayer for relief, filed.

Hearing on motion for entry of Default Judgment. Decision Reserved. (Walker)

July 9, 1940. Affidavit of Service of Motion filed.

July 10, 1940. Notice of motion for leave to appeal without giving security for costs. Notice of Appeal to Court of Appeal, &c., filed.

July 22, 1940. Hearing on motion for leave to appeal without giving security for costs. Ordered motion granted but cost bond is to be placed with Clerk. (Walker.)

June 11, 1941. Notice of Motion and Motion and Affidavit thereto for permission to submit Affidavit and Exhibits in Opposition to the Motions to Dismiss, filed.

June 12, 1941. Stipulation adjourning motion filed (June 23).

June 23, 1941. Hearing on motion for permission to submit Affidavit and Exhibits in opposition to the motions to Dismiss. Appearance: Plaintiff in Person. In Opposition: H. Collin Minton, Jr. for himself, Utah Fuel Company, and for those for which he filed his Special Notice. Plaintiff submitted his Motion and moved to submit his Exhibits. Motion to submit the Exhibits granted and Exhibits submitted by the plaintiff and received by the Court in open court. Mrs. Bergen, Court Stenographer, in Person received took down the dictations of Judge Walker consisting of brief description of each Exhibit. Decision Reserved. (Walker)

Aug. 15, 1941. Notice of Motion for leave to file 2nd Supplemental Bill of Complaint, &c. filed.

Aug. 25, 1941. Hearing on motion for leave to file second supplemental Bill of Complaint adding parties defendants Etc. Plaintiff Appeared for the Motion and explained to the Court the loss of his envelope containing his motion papers and moved the court to postpone the hearing of the motion

to obtain copy from Clerk's Office. Motion denied. No Appearance in Opposition to the motion for leave to file 2nd Supp. Complaint. Motion Dismissed. (Smith)

November 19, 1941. Memorandum of Findings of Fact and Conclusions of Law, Filed. (Walker)

November 25, 1941. Order quashing service of Summons on Carol C. Johnson, filed.

November 28, 1941. Order striking service of summons as to Nicholas J. Pappas, Helen N. Pappas, Harry Sussman (not served. Out of District) and William V. Rosenkrans, filed.

Jan. 24, 1942. Notice of Appeal, filed.

Jan. 29, 1942. Transcript sent to C. C. A.

And the court having heard the arguments for and against the said three motion, and having received plaintiff's Opposing Affidavits and the exhibits submitted by him, the plaintiff, and after due deliberation having duly made its decision of its findings of fact and conclusions of law, and having duly filed and entered the same in the office of the Clerk of the Court; to which ruling of the court in so far as the granting of the motion of Carol C. Johnson, William V. Rosenkrans, et als., and to H. Collin Minton, Jr., as to his participation in the plot as set forth in the Complaint and Exhibits, the plaintiff have had timely excepted by filing his Exceptions and annexing the same to his Notice of Application for Writ of Mandamus;

Now, on Motion of the plaintiff, Nicholas J. Curtis, It is

ORDERED, Adjudged, and decreed that an Order on said Findings of Fact and Conclusions of Law be and the same is Ordered Entered on the Docket in the Office of

the Clerk of this Court at the Court House of the United States District Court for the District of New Jersey, at Trenton, New Jersey.

.....

Dated this ..... day of May, A. D., 1942.

Supplement:

May 4, 1940, Praecipe for Default of Pleading filed against Mark Tuttle.

May 2, 1940, Praecipe for Entry of the Default of Dr. E. R. Murphy and Charles W. Kutz, filed.

June 17, 1940, Praecipe for Entry of the Default of: 1. Dr. Fred. W. Taylor; 2. Dr. Leslie J. Paul; And the Bamberger Coal Company filed.

October 23, 1940, Clerk's Certificate as to the above three Praecipes for Entries of said defaults, filed.

.....

Dated the day and year as above subscribed.

Defendant	Where Served	Method of Service and Date
Dr. R. E. Murphy	Salt Lake City, Utah.	Personally — April 11, 1940.
Chas. W. Kutz	Washington, D. C.	Personally — April 6, 1940.
Dr. Percy Hickling	Washington, D. C.	(Deceased)
William H. Fay	Washington, D. C.	(Not Found)
William J. Hazen	Salt Lake City, Utah.	(Not Found)
William H. Folland	Washington, D. C.	by serving wife, Grace. April 9, 1940.
Dr. Leslie J. Paul	Salt Lake City, Utah.	Personally — May 22, 1940.
Dr. Samuel Wolf	Salt Lake City, Utah.	Deceased.
Simon Bamberger	Salt Lake City, Utah.	(Deceased)
Dr. Frederick Dunn	Springfield, Utah	Personally — April 11, 1940.

Dr. Frederick V. Taylor	Provo, Utah	Personally — May 24, 1940.
Dr. A. C. Callister	Salt Lake City, Utah.	Personally — April 9, 1940
Dr. D. E. Smith	Salt Lake City, Utah.	Personally — April 9, 1940.
Bamberger Coal Co.	Salt Lake City, Utah.	by Wm. D. Eldridge, V. P.—May 22, 1940.
Joseph Ririe	Salt Lake City, Utah.	(Deceased)
D. O. Larson	Salt Lake City, Utah.	Personally — April 9, 1940.
Charles E. Maybe	Salt Lake City, Utah.	Personally — April 9, 1940.
Mark Tuttle	Salt Lake City, Utah.	Personally — April 9, 1940.
W. D. Sutton	Salt Lake City, Utah.	Personally — April 9, 1940.
Dr. Robert S. Allison	Salt Lake City, Utah.	(Deceased)
Dr. Francis S. Bascom	Salt Lake City, Utah.	(Deceased)
Ferdinand Errickson	Salt Lake City, Utah.	(Deceased)
Louis Brownlow	Chicago, Illinois	(Not Found)

(SEAL)

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of this said Court at Trenton, in said District this 16th day of October, nineteen hundred and forty.

Benjamin F. Havens,
Clerk.

By Charles S. Chevrier,
Deputy.

ORDER EXTENDING TIME FOR ASSIGNMENT OF ERRORS, etc.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 7929.

NICHOLAS J. CURTIS,
Petitioner,
vs.
HON. THOMAS GLYNN WALKER and HON. WILLIAM F. SMITH, United States District Judges for the District of New Jersey.

Coram: Biggs, Maris and Clark, JJ.

Upon consideration of the petition of Nicholas J. Curtis, filed February 6, 1942,

It is ORDERED that the time for petitioner in the above entitled cause to file his assignment of errors and bond on appeal in the District Court of the United States for the District of New Jersey be, and the same is hereby extended to May 10, 1942.

John Biggs, Jr.,
Circuit Judge.

February 9, 1942.

OPINION.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 7929. October Term, 1941.

NICHOLAS J. CURTIS,
Petitioner,
vs.
HONORABLE THOMAS GLYNN WALKER and HONORABLE WILLIAM F. SMITH, United States District Judges for the District of New Jersey,
Respondents.

On Petition for Writ of Mandamus.

Before BIGGS, JONES and GOODRICH, Circuit Judges.

Per Curiam.

The petition will be dismissed for lack of jurisdiction.

OFFICE OF THE CLERK
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT
2046 U. S. COURT HOUSE,
9th & CHESTNUT STS.
PHILADELPHIA

WILLIAM P. ROWLAND
Clerk

May 11, 1942

Mr. Nicholas J. Curtis
218 N. Montgomery St.
Trenton, N. J.
Dear Sir:

We have filed your petition to extend your brief beyond the fifty page limit of our rules, and also to extend the length of your statement of the questions involved. The court has made no definite order on this petition, but states it will accept your brief in the extended form, as requested.

Very truly yours,
Wm. P. Rowland
Clerk.

MEMORANDUM OF NICHOLAS J. CURTIS.

(EXHIBIT A OF JUNE, 1941. R. S. UT.)

1st. Application .to Receive under Section 85-7-28: pp. 1-2. By order of the judge of the district court issuing the commitment the relatives OR FRIENDS OF A PATIENT IN THE HOSPITAL MAY RECEIVE SUCH PATIENT THEREFROM: PROVIDED, no patient who is under a criminal charge or conviction shall be discharged from the hospital without the order of the court having jurisdiction of such criminal case. Applications must be made to the judge and satisfactory evidence produced that such patient will be properly taken charge of and given proper care. Such applicants shall give bond to the dis-

trict court of the county in substantially the following form: (form follows here);

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; . . . protest against wrongs, and petition for redress of grievances; . . . Const. of Ut. Article 1, Sec. 1;

Sec. 5 (Habeas Corpus)

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it. Const. of Ut.;

Sec. 8. (Offenses bailable)

All prisoners shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumptions strong;

Sec. 9. . . . ; nor shall cruel and unusual punishment be inflicted. . . . ;

Sec. 11. (Courts Open. Redress of injuries;

12. (Rights of accused persons.)

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, . . . ;

Sec. 24. (Uniform operation of laws.)

All laws of a general nature shall have uniform operation;

Art. IX, Sec. 19. But one form of civil action;

Art. XII. Corporations. Sec. 4 (corporations defined. Suits)

. . . shall be subject to be sued, in all courts, in like case as natural persons;

2nd. My Affidavit for leave to obtain to obtain the records of my case in order to prepare my defense while in the County jail. p. 3.

3rd. My Affidavit challenging the Judges of the Third Dist. Ct., Salt Lake County, Ut. pp. 4-7.

4th. Copy of my Complaint against Utah Fuel Co., et als., U. S. Dist. Ct. D. of Ut. pp. 8-12. Wm. H. Folland, defendant made the copy the bases of the criminal proceedings against me and made it a part of the Record. He was in the office of either City Attorney or District Attorney and the boss of the Dist. Ct. and co-defendant-partner of Ferdinand Erickson, Chief Counsel of the defendant Utah Fuel Co.

5th. Copy of Petition as an attempt to expose the plot. Original was turned over to the Police of the District of Columbia.

The Petition was issued pursuant to the authority of the provisions of Section 54 of Title 8.—Aliens and Citizenship.

Sec. 54. Speedy trial.—Whenever the President has reason to believe that offenses have been, or are likely to be committed against the provisions of chapter 3 of Title 18 or of Sections 246, 248, 443, to 445 of said Title 18, or of Section 51 of this title, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time

as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him to attend at the place and for the time therein designated. (R. S. 1988.) pp. 13-23.

6th. The Petition of defendants Louis Brownlow and Chas. W. Kutz for Writ De Lunatico Inquirendo—the commission of crime rendered probable. pp. 24-5.

7th. Court's Order on said Petition. p. 26.

8th. Writ of Summons against me while held as their prisoner. p. 27.

9th. Letter of the defendant Dr. Frederick Dunn to Judge G. A. Iverson written after the intervention of the Greek Consul. p. 28.

10th. My Motion to Quash, Vacate and Set Aside the Proceedings against me at Salt Lake City. pp. 29-33.

11th. My Letter to Herman Harms, (Dr) then my Landlord. 34-5.

12th. My Affidavit to my Motion to Quash above but is separated from it. p. 36.

13th. Joint Subpoena against the defendants:
William J. Fay,
Melvin Hazen,
W. H. Folland,
Judge Fredrickson of Utah Fuel Co. p. 37.

14th. Summons. U. S. Dist. Court, Dist. of Utah. Case No. 5547. Curtis vs. Utah Fuel Co., et als. pp. 38-39.

15th. Sheriff's Return Arresting me. p. 40.

16th. District Court or State printed form of Affidavit or Information issued against me by the defendant W. H. Folland, then defendant in my case 5547. See par. 4th above. 2 double pages make 4 single pages. pp. 4142, to be read in as 41-44. o.

17th. The Decree of Judge Wm. M. McCrea, the mob leader. 43.

18th. Sheriff's Return of Commitment. p. 44.

19th. The Affidavit or Information of William J. Fay, Agent of the Board of Charities of the District of Columbia in the Third Dist. Ct. of Salt Lake County, Utah. This would be the first Information against me in Utah but the record is confused. Two double pages 45-46.

20th. Sheriff's Office Return of Commitment. p. 47.

21st. Clerk's Certificate.

Nicholas J. Curtis.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

(EXHIBIT B. OF JUNE, 1941.)

(EXHIBIT C. OF JUNE, 1941.)

I now offer in evidence a certified copy of an Affidavit of Dan Curtis, companion-brother and assistant who assisted me to carry on the infernal plot.

Nicholas J. Curtis,
Plaintiff.

Together with the Exhibit B. first above I also offer in evidence the or a copy of an Affidavit of Christ Zavis, (Hristos Zavitsanos). These two witnesses are now residing in Greece, and are those for whom Applications have been made to take their Depositions. The Honorable Court's attention is hereby specially called to these two affidavits and the Depositions.

Nicholas J. Curtis,
Plaintiff.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

(EXHIBITS D. AND E. OF JUNE, 1941.)

I now offer in evidence two certified copies of two Motions duly verified by the defendant William H. Folland. These

Motions show the perjury or perjuries and subornation of perjuries resorted to and used to suppress the administration of justice in the State of Utah.

Nicholas J. Curtis.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

I now offer in evidence Certified copy of the case of Jeremiah Beals vs. Nick Curtis and Peter Zaritsons.

Exhibit F. of June, 1941. See page 36 of the Complaint or Declaration.

Exhibit G. Letter from the County Recorder of Box Elder County, State of Utah, under date of June 9, 1939. This letter shows that the assessed valuation of the Real Estate is $930.00. The house on the property is assessed at $170.00. We paid in cash U. S. Gold coin $1000. property taken away by perjury and subornation of perjury.

Exhibit H. A letter from the County Recorder of Box Elder County, Utah, giving the Record of the frauds on the farm.

Exhibit I. Copy of Deed from Kafton to the Union Central Life Insurance Co. The Insurance Company is holding the Title and one Lincoln Jensen is farming the farm.

Exhibit J. Copy of a Judgment which is pleaded on page 35 of the Declaration.

The conspiracy complained of has suspended the Statute of Limitations of the State of Utah, to-wit:

R. S. of Utah. 104-2-36. Effect of Absence from State.

If when a cause of action accrues against a person he is out of the state, (in my case I was deported by the defendants) the action may be commenced within the term herein limited after his return to the state; and if after a cause of action accrues he departs from the state, the time of his absence is not part of the time limited for the commencement of the action. (C. L. 17, Sec. 6479.)

104-2-19. Id. Disabilities Enumerated—Time of Not Reckoned.

At the time of the writing of this Memo I am unable to locate a copy of the Sections of the R. S. of Utah which I have prepared for the Court. I will keep on searching for it and submit it. N. J. Curtis.

Peter Zavitsanos is dead. Recording, R. S. Uta., 19-18-6 (11) 10.

Judgments Affecting Real Estate. 19-18-10.

12. Notice Imparted. 19-18-11. Recordation Imparts Notice. 8-1-6; 78-3-2.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

Please see the Petition. Abraham L. Rosenberg, Attorney, and Minas Candaras, defendant, appeared before the Commissioner for the hearing on the Rule to Show Cause.

First of all Rosenberg attacked me and stated to the Commissioner thus:

He should be kept in an Institution.

He sues us here and there and brings us up here.

Nicholas J. Curtis,
Plaintiff.

Exhibit K. Letter of Abraham L. Rosenberg relating to the case of Curtis v. Minerva Restaurant, dated Feb. 27, 1935.

Exhibit L. Another Letter from Rosenberg in the same case.

Exhibit M. The Original of the Petition for Rule to Show Cause before Jerome J. Dunn, Commissioner.

Exhibit N. Petition for Rule to Show Cause.

Exhibit O. Order on the Petition for Rule to Show Cause.

Note. The Hon. James H. White, Judge of the District Court at Hackensack, N. J., is hereby credited with all due respect to his judicial integrity and for refusing to entertain charges relating to the plot or conspiracy. He gave judgments in two of my many cases in accordance with my pleadings and the laws of the State.

Nicholas J. Curtis.

Exhibit P. The Petition of James A. Demis by Thomas S. Doughty, Solicitor of Petitioner.

Exhibit Q. The Affidavit of James A. Damis (Demis).

Exhibit R. Order on Petition and Affidavit.

Exhibit S. Certificate.

Memorandum. During the time the proceedings were

instituted and at the time James A. Damis (Demetrios Demopoulos) swore and said that:

(6) That the persons having an interest, or claiming to have an interest in the said sum of Seventy-one Thousand Two Hundred Dollars ($71,200.00) is your petitioner, and the following tenants and encumbrancers: (fifth Par.)

George Curtis and John Nicholaidis, who hold a lease, covering a portion of the building located on the property so taken, which said lease bears date the 21st day of May, 1926.

Both George Curtis and John Nicholaidis were not his tenants. John Nicholaidis long before then sold his interests to Dan Curtis, my Brother, and some time thereafter George Curtis sold his interest to Dan Curtis, my brother and companion. For or about two years then last passed Dan Curtis and myself operated the Lunch Room on the corner of said house and James Damis was receiving his mail there. He promptly received all his monthly rents. The building was being taken down and we were there operating the lunch room. Thomas Doughty came across the street on the east side of the street and watched the working men working above us and the lunch room operating under them. There my brother pointed out to me Thomas Doughty and told me that he was the attorney who was the right hand of James A. Damis. The two defrauded the moneys paid by the City of Ridgewood for the lunch room. Doughty asking: Q. Who occupied the lunch room? A. His name was George Curtis. Q. Will you tell about his lease? He abandoned the property didn't he, and told you he was leaving the property? A. Yes.

The plot worked both against me and my brother.

Nicholas J. Curtis.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS vs. UTAH FUEL COMPANY, ET ALS., No. 725.

NICHOLAS J. CURTIS, PLAINTIFF:

I now offer in evidence a copy of the Record of my case against James and Rosalyna Peraino. 4th Judicial District Court of Bergen County. I have been unable to obtain certification. See letters sent and received which are parts of the Record here. See the U. S. Post Office Money Order received which is in the Record;

A Memo. of the Docket Entries of the Paterson Savings Institution Case against me for $75.00 and costs for room rent. I have been unable to obtain a copy of the perjured complaint. See the inclosed copies of the letters sent and received which are parts of the Record herein;

And copies as served upon me in the matter of Paterson Savings Institution vs. B. L. Marcus.

I cannot say any more than to call the attention of the Honorable Court to the matters and things set forth in the Record submitted herewith.

And I do charge that the conspiracy is on in full force to date (June, 1941) within the District of New Jersey and particularly the Division of the Federal District Court for the District of New Jersey, at Newark, New Jersey.

Respectfully,

Nicholas J. Curtis.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS vs. UTAH FUEL COMPANY, ET ALS., No. 725.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

I now offer in evidence the files and records and the Transcript of the Record of the Case of Nicholas J. Curtis vs. Mathew Zervos, et als. Police Department, City of Poughkeepsie; City Court of the City of Poughkeepsie, Dutches County, State of New York, and further set forth as follows:

Mathew Zervos now was Mathew Leins in 1925, and fully co-operated with the defendants Wm. V. Rosenkrans, Pappases, Sussman and Nicholaidis in the plot to defraud me of my wages at Paterson, N. J. Please see the Affidavit of John Gall, my attorney. It is annexed to my Opposing Affidavit issued against their motion to dismiss the present suit. See pages 66-67 of the Printed Parts of the Record as Printed for the U. S. Supreme Court. From Paterson, N. J., he went to Hackensack, N. J., where he cut some one with a knife and got away with it leaving Hackensack, N. J. While at Newburgh, N. Y., a cook gave me the name and address of the Bardavon Eat Shop and asked me to go there and ask for work. Thereafter I went there and did not ask for work but I took coffee etc. Mathew Zervos came out of the kitchen and asked me to go to work. I

went. Christmas came and he got so drunk and attacked a Polish man in the cellar and nearly killed him in the dining room. Was arrested and the day of the hearing he asked me to go to his lawyer's office with him. He also asked one waitress and the three of us went. There his lawyer rehearsed us what to say and directed that the truth be not said. The plot was carried out and the results of it were so the Prosecutor asked the Polish boy to sign complaint against me. He refused saying that I helped him out to get away and in doing so I got hit. . . . The criminal conspiracy of Utah. Mathew Zervos acquitted with honors. Chas. J. Corbally, J.

On my way back from the Circuit Court of Appeals Third Circuit I was held up by the bus driver and made to pay 70 cents over and above my return ticket. See the Slips included in the Exhibit.

I complained to the Police Department and the Sergeant-at-Desk sent me to the Clerk of the City Court. I went to the Clerk of the City Court and he instructed me to return. I returned and met some one from the Prosecutor's Office and he begun asking incriminating questions leading to the plot. Failing he instructed me to leave and advised me that I will hear from them. Never heard from.

The printing of the parts of the Record, the Petition for Writ of Certiorari, and the Brief thereto was being done by the Lansing Brous Printing Company, Poughkeepsie, N. Y. and I was working making up money to pay for the job. The foreman, Mr. Perry, came to the restaurant and inquired of matters and things, mistakes etc. Mathew Zervos overheard the case going to the Supreme Court and he became uneasy for his part of the plot. See the Complaint and Request to Find. The last time I called for my wages Mathew Zervos called on John Scordos, his cook, to give me something to eat and ask

me to go back to work for him. Scordos answered to him that he have had asked me to eat and I refused. Zervos then told him: Then he will not come to work. He will get his money and pay the printers and take care of his case and leave us. I will give him nothing. You are not to say anything of what happened here. Scordos: No I will say nothing. . . . On the hearing of the case I submitted to the Judge the Complaint and at the Judge's suggestions I gave a copy of the complaint to Harry Mustakas who appeared for Zervos. The Judge gave him time and instructed him to read it. He read it and then he was asked by the Judge what has he to say. He answered: No, I owe him nothing. I paid him. During his questioning the Judge called him to his side and the two staged a rats' performance of their affections. At the end of the trial the judge announced: Decision reserved. And jumping off the Bench he murmured: This man appears mentally deranged. Let's see what the Clerk says.

See the Stenographic Transcript of the Case.

Judge Corbally refused to enter his decision and I issued the Request to Find Pleading. See the copy of it. It is a part of the Record.

The Telephone Directory Gives: Corbally, Chas. J. Lawyer, 226 Union Street. (Poughkeepsie, N. Y.) In the Bldg. given there the names of 4-5 lawyers are listed with Corbally's and the windows of the City Court Room face those of the Law Offices of Corbally and others. Union Street is a one way street and a few rods from Zervos' restaurant.

Zervos believed that the case was lost and while in his trouble with the City Court he confided to me how he receives his defense from Corbally himself in the Masonic Temple where they meet and then presents them to him

in court; and how he passes to Corbally the liquor in the Temple.

The sum of $30.00 thus withheld or being defrauded; the would be City Court Action or Proceeding which would have to be resorted to; and the throwing me out of work and assaulted out of their restaurant (in their minds) would defeat the Certiorari Proceeding and probably the Mandates to the Clerk of this Court. To meet this plot the Printers helped me.

Nicholas J. Curtis,
Plaintiff.

MEMORANDUM.

Following the case of the Owl Restaurant I submit my own copies of my case against Constantine and Ellis, Inc., Newburgh, New York, and charge that the Director whose letters are made parts herewith followed the plot in every case which was sent to here. To the same effect with the Industrial Commissioner who failed to deal with the appeals made to her to check the corruptive practice carried on in the case. The plot pulled out the Alps Restaurant just as you would pull out an onion off the ground in the spring.

Nicholas J. Curtis,
Plaintiff.

Plaintiff's Note. Reference is made above of the case of Curtis vs. The Owl Restaurant, et als. The best parts of the Record of that case are to be found in the Photostated Exhibits but my copy of the Memo. is missing. The Court's attention is called to the Photostated Record of the Exhibits.

UNITED STATES CIRCUIT COURT OF APPEALS
OF THE THIRD CIRCUIT.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, et al.
Appellees.

MEMORANDUM OF APPPELLEES, DR. FREDERICK DUNN, DR. A. C. CALLISTER, DR. E. D. SMITH, CHARLES E. MABEY and WILLIAM D. SUTTON.

COUNTER-STATEMENT OF QUESTION.

The question involved, insofar as it affects these Appellees, is this:

Was the District Court justified in granting the motion to quash service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton?

COUNTER-STATEMENT OF THE CASE.

In the District Court, H. Collin Minton, Jr. Esq., appeared specially as counsel for the above named Appellees

and moved to quash the service of summons. The motion was granted by the District Court.

The undersigned come now and enter their appearances as co-counsel with said H. Collin Minton, Jr. and H. Brua Campbell, Esq., representing the above-named Appellees for the purposes of this appeal. We feel that the Counter-Statement of the case and the arguments and appendix contained in the "Memorandum of Appellees" previously filed with this court, when considered in the light of the provisions of Title 28, U. S. C. A. 112, support the ruling of the District Court as it affects the above named Appellees.

Accordingly, in joining with Messrs. Minton and Campbell we wish hereby to adopt and to stand upon the said Memorandum of Appellees as previously prepared by Messrs. Minton and Campbell and filed with this Honorable Court. We submit that the appeals should be dismissed.

Respectfully,

GROVER A. GILES,
Attorney General of the State of Utah.

ZAR E. HAYES,
Assistant Attorney General of the State of Utah.

Associated with:

H. COLLIN MINTON, JR. and
H. BRUA CAMPBELL,
As Attorneys for Appellees Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton.

NOTICE OF MOTION TO STRIKE.

To Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton, Appellees, and Grover A. Giles, Attorney General of the State of Utah, Zar E. Hayes, Assistant Attorney General of the State of Utah, H. Collin Minton, Jr., and Brua Campbell, Their Attorneys:

Take Notice that at the hearing before the Judges of the United States Circuit Court of Appeals, Third Circuit, I will move to strike your Memorandum so filed by you upon the grounds set forth in the following Motion.

Respectfully,

NICHOLAS J. CURTIS, LL.B.,
Appellant Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.

RECORD.

To the Honorable Judges of the Circuit Court of Appeals for the Third Circuit:

Nicholas J. Curtis, plaintiff, refers to the so-called Memorandum of Appellees filed herein which is construed by the plaintiff to be an obscene and objectionable pleading. New Jersey Supreme Court Rule 39 (Rule 25, Pr. Act 1912).

Plaintiff moves to strike this Memorandum of Appellees from the records of this Court upon the following grounds and each of them:

1. The pleading is irregular, defective, scandalous, obscure, uncertain, and obscene. (We submit that the Appeals should be dismissed.) (Rule 25, Pr. Act 1912.)

2. The first Appeal in this Court is case No. 7525, October Term, 1940, and is construed by the plaintiff to be a separate and distinct proceeding.

3. The case now before this Court is Case No. 8027, October Term, 1942, and is construed by the plaintiff to be a separate and distinct proceeding from said Case No. 7525.

4. The present practice of this Court is that heretofore customarily followed in this Court. (Rule 10, par. 1 of the Rules of this Court.)

5. The practice heretofore followed in this Court is the same as in the Supreme Court of the United States, as

far as the same may be applicable. (Form Rule 8 of this Court.)

6. Rule 27 of the present Rules of this Court provides: Within 30 days after the record is filed with this Court the Appellant or petitioner . . . shall file with the Clerk 20 copies of a printed brief and serve five copies thereof on each opposing counsel. The plaintiff has complied with said paragraph and the Order of this Court. (See p. 35a of Plaintiff's Brief.)

7. The second paragraph of present Rule 27 of the Rules of this Court provide: The Appellee or respondent shall in like manner file and serve a brief within 20 days after the filing and serving of the Appellant's or petitioner's brief. This has been utterly violated by the said Attorneys who now appear and file said Memorandum.

Former Rule 24, par. 3, provides: . . . the counsel for the defendant in error or Appellee shall file with the Clerk twenty printed copies of his brief and give not less than five copies to the counsel for the plaintiff in error or appellant. His brief shall be of a like character with that required of the appellant. These parts of former Rule 24 have been also utterly violated by said attorneys.

(Waiver: By Appellees of right to file statement opposing jurisdiction; Rule 12, par. 3, p. 10, U. S. Supreme Court Rules; of right to file brief (etc.). Rule 38, par. 4, p. 31; Rule 41, par. 5, p. 34.)

8. The said Appellees and their said Attorneys failed and neglected to file any joinder of the issues (questions involved as set forth in the plaintiff's brief). New Jersey Supreme Court Rule 36. Joinder of Issue.) (Rule 22, Pr. Act 1912.)

See also requirements of Rules 46, Evasive Denials; 47, Certainty of the Rules of Practice of the Supreme Court of the State of New Jersey and the Brief of the Appellant.

9. The District Court was not justified in granting the motion to quash summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton. (Answer to Appellees' Counter Statement of Question.)

The District Court says: (Ruling on Motion No. 2, pp. 19a, 20a of Brief) Except as provided in Sections 113 to 118 of Title 28 U. S. C. A., no civil suit shall be brought in any District Court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suits shall be brought only in the district of the residence of either the plaintiff or the defendant.

The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able there to secure the service of process on the defendants.

The motion is granted and service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey (Charles R. Mabey), and William D. Sutton is quashed. The District Court is utterly wrong, because the jurisdiction of the District Court . . . does not rest on diverse state citizenship only . . . (see par. b on page 3 of the Complaint or Declaration; The present Brief on file in this Court, and the Record of the case in this Court.

It is truly insisted by the Appellant that the inhibition or the law found in the provisions of Section 112, Title 28 U. S. C. A. does not support the said Ruling of the District Court because the inhibition or prohibition, or restriction found in the provisions of said Section 112 does not apply to nor govern the present suit now pending in this Court, because the action arises under Articles of the Constitution of the United States cited in par. b, on page 3 of the Complaint. As well as the . . . Laws of the United States . . . cited in said par. b of the complaint and in the Brief.

10. Notwithstanding the status of the said appellees the appeal cannot be legally dismissed because the appeal is taken against all the defendants, as well as residents as non-residents.

11. The action of the said Attorney General and the said Assistant Attorney General as by them taken in behalf of the defendant-appellees is a violation of and contrary to the provisions of Article VII, Section 18 of the Constitution of the State of Utah, and of the provision of the law found in R. S. of Utah, 87:6-1 (1 and 13), to wit:

Constitution of the State of Utah, Article VII, Section 18:

(Duties of Attorney General.)

The Attorney General shall be the legal adviser of the State officers, and shall perform such other duties as may be provided by law.

Chapter 6. Attorney General.

87:6-1. General Duties.
It is the duty of the Attorney General:

(1) To attend the Supreme Court of this State, and all courts of the United States, and prosecute or defend all causes to which the State or any officer, board or commission thereof in an official capacity is a party, and he shall have charge as attorney of all civil legal matters in which the State is in any wise interested.

(2) to (12) left out.

(13) To institute and prosecute proper proceedings in any court of the State or of the United States to restrain and enjoin corporations organized under the laws of this or any other State or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases to forfeit their corporate franchises, dissolve such corporations, and wind up their affairs. (C. L. 17, Secs. 5936 to 5938.)

12. In addition, however, the plaintiff's suit is also maintainable in the District Court of the United States for the District of New Jersey, upon the grounds that, and for the reasons that for a period of 29 years, or thereabout, the courts of the State of Utah denied civil rights and he was unable to secure the benefits for the rights secured to him by the United States Constitution and the laws of the United States providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States. The conspiracy was carried into the United States District Court for the District of Utah and by perjured pleadings and mob tactics that tribunal has been and is unable to do justice in the case.

See, to wit:

United States Code A. Title 28, Sections 71, (Judicial Code, Section 28 Amended.) Removal of Suits from State Courts; 74 (Judicial Code, Section 31.) Same; causes against persons denied civil rights.—Whenever any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States . . . may be removed;

77. (Judicial Code, Section 34.) Same; suits by Aliens.—See the Exhibits as to the truth of the facts.

13. The Memorandum of Appellees and their said attorneys is an unusual and objectionable proceeding as will be readily seen by this Court. Each and every one of the grounds set forth above constitute sufficient basis for an Order of this Court striking the same from the record.

Respectfully submitted by

NICHOLAS J. CURTIS, LL.B.,
Plaintiff-Appellant Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.

Dated this 28th day of September, 1942.

I hereby certify that in my opinion said motion is well founded in point of law.

NICHOLAS J. CURTIS, LL.B.,
Appellant.

UNITED STATES CIRCUIT COURT OF APPEALS

THIRD CIRCUIT

NICHOLAS J. CURTIS,
Plaintiff-Appellant

vs.

UTAH FUEL COMPANY, et al.,
Appellees.

MEMORANDUM OF APPELLEES

COUNTER-STATEMENT OF QUESTIONS

1. Was the District Court justified in striking Counts 23 and 24 of the complaint?

2. Was the District Court justified in granting the motion to quash the service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe and William D. Sutton?

3. Should the Court have entered a default judgment against the Bamberger Coal Company?

COUNTER-STATEMENT OF THE CASE

This matter has frequently been brought before this Court; and any analysis of the facts would seem to be an imposition upon the Court's time.

To requote to the Court a case which has been frequently quoted prior to this date:

> "Having read the said petition, motions and demurrers, this Court is of the opinion that the bulk of said petition is a confused mass of allegations which bear no relation to each other. They are impertinent and irrelevant, scandalous in their nature, and the whole petition bears upon its face evidence that it was intended to villify and abuse the defendants, rather than a lawyer-like effort to set forth a legitimate cause of action." *Crabtree* vs. *Steele,* 115 N. W. 593, Sup. Ct. of Iowa, 1908.

As stated by this Court in this same entitled cause by opinion filed March 15, 1938:

> "The whole complaint is prolix, verbose and incoherent. Making all due allowance for the fact that the plaintiff is not a member of any bar (although he subscribes himself a bachelor of law) the document on its face fails to disclose any cause of action against the defendants herein."

As to the first question, a reading of Counts 23 and 24 presents the best arguments for the actions of the District Court.

As to the second question, the best argument is the ruling of the District Court, which, for convenience, is herewith repeated:

> "Except as provided in Sections 113 to 118 of Title 28, U. S. C. A., no civil suit shall be brought in any dis-

trict court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of either the plaintiff or the defendant.

"The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able there to secure the service of process on the defendants.

"The motion is granted and service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe (Charles R. Mabey) and William D. Sutton is quashed."

As to the third question, the docket does not show that Judge Walker ever ruled upon the application to substitute Bamberger Coal Company in the place and stead of Simon Bamberger, deceased (p. 30-a et seq., Brief for Appellant). *Ergo,* this Court has no jurisdiction.

The appeals should be dismissed.

Dated
July 23, 1942

H. Collin Minton, Jr.,
Attorney for Utah Fuel Co., and pro se, and as per Exhibit "A."
Trenton Trust Building,
Trenton, N. J.

H. Brua Campbell,
Of Counsel,
40 Wall Street,
New York, New York.

Exhibit "A"

(*Exhibit "A"*)

To clarify counsel's representation, copy of letter with respect to same furnished Judge Walker is exhibited herewith:

MINTON & ROGERS
COUNSELLORS AT LAW
TRENTON, NEW JERSEY

H. Collin Minton, Jr. Trenton Trust Building
Norman T. Rogers
B. Braddock Dinsmore, Jr.

July 26, 1940.

Honorable Thomas Glynn Walker,
Judge U. S. District Court,
Post Office Building,
Newark, New Jersey.

Re. *Curtis* vs *Utah Fuel Co.*

MY DEAR JUDGE WALKER:

With the exception of those parties defendants represented by Mr. Rosenkrans, and Carol C. Johnson, appearing personally, I represent all the other defendants. I have made a motion with respect to defendants Dunn, Callister, Smith, Mabey and Sutton appearing specially for that purpose. On the record I moved to dismiss on behalf of the Utah Fuel Company and myself personally. It is my understanding that if the motion to dismiss is granted, the benefits will run to all parties. On the argument on May 6, 1940, on motion to dismiss, if I recall correctly and the transcript will so indicate, I stated my full representation.

The record in the Clerk's office shows that the only defendants represented by me, who were properly served in this District, were the Utah Fuel Company and myself. It, therefore, follows that the only parties represented by me who are properly before this Court are those parties so served. The reason why I entered a special appearance on behalf of Dunn, Callister, Smith, et al., was because I was so directed by a law firm in Salt Lake City.

The plaintiff has cited in his complaint parties defendant out of the jurisdiction of this Court on the ground that "complete relief is to be accorded but they are neither inhabitants of, or are they to be found within the jurisdiction of this Court." An examination of the statutes and rules cited by plaintiff gave no basis for such relief in a proceeding of this nature.

No answers have been filed to date by me on behalf of my clients for two reasons, first, on May 6th it was stated by the Court that pending a ruling on the motion to dismiss and expunge, all matters would be held in abeyance until decision thereon; second, because of the factual basis for the motion made, it would be impossible to prepare an answer to incoherent pleadings.

I have been advised that plaintiff has taken an appeal from your Honor's ruling of July 8, 1940. How an appeal can be taken without an order entered is beyond my conception of practice.

Your Honor may be already advised that plaintiff has been bringing these suits for years, and has had me twice before the Circuit Court of Appeals in Philadelphia within the last three years. I believe that the first suit which he started was started shortly after our good friend Judge Bodine had been elevated from the District Attorney's office to the Federal Bench. It is my humble suggestion

that the rules of this District be revised to afford some relief against recurrent and unfounded litigation.

Respectfully yours,

H. C. MINTON, JR.

HCM:H
cc Campbell
P. S. Attached hereto is a list of all the defendants whom I represent, with their addresses, and method and place of service.

Defendant	*Address*	*Method of service*
Dr. R. E. Murphy	Salt Lake City	Personally — Apr. 11, 40
Chas. W. Kutz	Washington, DC	Personally — 4/6/40
Dr. Percy Hickling	Washington, DC	(deceased)
William H. Fay	Washington, DC	(Not found)
William J. Hazen	" "	(" ")
William H. Folland	Salt Lake City	By wife, Grace 4/9/40
Dr. Leslie J. Paul	" " "	Personally — 5/22/40
Dr. Samuel Wolf	" " "	(deceased)
Simon Bamberger	" " "	(deceased)
Dr. Frederick Dunn	Springville, Utah	Personally — 4/11/40
Dr. Frederick W. Taylor	Provo, Utah	Personally — 5/24/40
Dr. A. C. Callister	Salt Lake City	Personally — 4/9/40
Dr. D. E. Smith	Salt Lake City	Personally — 4/9/40
Bamberger Coal Co.	Salt Lake City	By William D. Eldridge V. P.,— 5/22/40

Joseph Ririe		(deceased)
D. O. Larson	Salt Lake City	Personally — 4/9/40
Charles E. Maybe	Salt Lake City	Personally — 4/9/40
Mark Tuttle	Salt Lake City	Personally — 4/9/40
W. D. Sutton	Salt Lake City	Personally — 4/9/40
Dr. Robert S. Allison		(deceased)
Dr. Francis S. Bascom		(deceased)
Ferdinand Erricksen		(deceased)
Louis Brownlow	Chicago, Ill.	(Not found)

All the above are defendants whom I represent in the matter of *Curtis* v. *Utah Fuel Company.*

APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,

vs.

THE UTAH FUEL COMPANY, a corporation, et als.,
Defendants.

Civil Action File No. 728
Action at Law

271

NOTICE OF MOTION

Filed April 24, 1940

To NICHOLAS J. CURTIS, *Plaintiff*:

PLEASE TAKE NOTICE that on behalf of The Utah Fuel Company and H. Collin Minton, Jr., we shall apply to the Honorable Phillip Forman, one of the Judges of the United States District Court for the District of New Jersey, at the United States District Court Room, Post Office Building, Trenton, New Jersey, on Friday, May 3, 1940, at ten o'clock (Daylight-Saving Time) in the forenoon or as soon thereafter as counsel can be heard, for an order striking out the complaint filed by you in the above stated cause upon the following grounds:

1. In the first count the plaintiff fails to allege any facts tending to show an obligation on the part of the defendant, The Utah Fuel Company, to reimburse the plaintiff for the alleged expenditures by the plaintiff for the benefit of another, or of any agreement or undertaking on the part of the defendant company so to do. Nor is Exhibit "A" referred to therein evidence of any such alleged obligation.

Plaintiff relies upon the allegations of paragraphs 3 to 13 as a basis for establishing the obligation alleged in the first count. While the said paragraphs may allege an agreement between the defendant company and a third person, there is no allegation therein contained of any expressed or implied agreement on the part of the defendant company to reimburse plaintiff for alleged voluntary expenditures by plaintiff for the benefit of said third person.

2. In the second count the plaintiff fails to allege any facts which would disclose a cause of action against the defendant-company and its agents or associates, and the allegations of paragraphs 36 to 39 therein referred to set forth facts that are totally disconnected with the activities

of the company-defendant and its agents and associates. The second count contains vague, indefinite and unrelated allegations, and is made up of accusations and conclusions of law totally unsupported by alleged facts.

3. In the seventh count the plaintiff fails to allege any facts which would constitute grounds for a cause of action against the defendant-company and its agents, and it is otherwise indefinite, uncertain, scandalous and bad for duplicity, and is made up of accusations and conclusions of law totally unsupported by alleged facts.

4. In the eighth, ninth and tenth counts plaintiff fails to allege any actions of the therein-named defendants which are in any way attributed to the defendant-company and its agents and associates, and hence the allegations of activities on the part of the therein-mentioned defendants which took place more than twenty years ago are totally unrelated to any alleged acts of the defendant-company. In addition there is contained in the tenth count scandalous charges against an officer of the United States courts.

5. In the eleventh, twelfth, thirteenth and fourteenth counts plaintiff makes scandalous accusations of alleged misconduct on the part of the defendant-company and its agents and associates—which wrongful acts, it is alleged, took place more than twenty years before and were committed with the purpose of preventing plaintiff from prosecuting an alleged cause of action against the defendant-company. There are, however, no facts alleged which would tend to establish the claim that plaintiff had cause to institute suit against defendant-company and, indeed, the plaintiff's allegations clearly defeat the contention that he has or ever had a cause of action against defendant-company.

6. The fifteenth, sixteenth and seventeenth counts contain nothing more than a number of unrelated, irrelevant and scandalous charges against several named defendants who are in no way alleged to have acted as agents or associates of said defendant-company, or to have had any connection with said defendant-company.

7. The eighteenth, nineteenth and twentieth counts contain further unrelated, irrelevant and scandalous charges involving alleged acts performed approximately eighteen years ago by persons whose connection with defendant-company is not stated. Furthermore it is alleged that such remote and unrelated acts were done for the purpose of preventing plaintiff from prosecuting an alleged cause of action which is shown on the face of the complaint never to have existed in the plaintiff's favor.

8. The twenty-third and twenty-fourth counts contain scandalous charges that the defendant-company conspired with petitioner herein to maliciously renew and reopen the alleged persecution of the plaintiff—although it appears from the allegations of the plaintiff that petitioner herein appeared in behalf of defendant-company in answer to a complaint filed by said plaintiff against said company-defendant.

9. The twenty-fourth count also contains unrelated and scandalous allegations concerning the courts and officials of the United States.

10. The twenty-fifth count contains only a narrative of facts which are unrelated, irrelevant, immaterial and scandalous, and contains no allegation of probable cause.

And Further Take Notice that at said time and place we will move for an order striking the said complaint and

all counts therein upon the ground that said document contains unrelated and scandalous allegations concerning the courts and officials of the United States of America and the State of Utah, and should not be allowed to remain among the records of this Court.

Respectfully,

MINTON & ROGERS,

Attorneys for Defendants, The Utah Fuel Company and H. Collin Minton, Jr.

NOTICE OF MOTION TO STRIKE.

TO DR. FREDERICK DUNN, DR. A. C. CALLISTER, DR. E. D. SMITH, CHARLES E. MABEY, WILLIAM D. SUTTON, H. COLLIN MINTON, Jr., and H. BRUA CAMPBELL:

PLEASE TAKE NOTICE that at the hearing before the Judges of the United States Circuit Court of Appeals, Third Circuit, I will move to strike your Second Memorandum so filed by you upon the grounds set forth in the following Motion.

Respectfully,
NICHOLAS J. CURTIS, LL.B.,
Appellant Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.

RECORD.

TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT:

Nicholas J. Curtis, plaintiff, refers to the so-called Second Memorandum of Appellees filed herein which is construed by the plaintiff to be an obscene and objectionable pleading. (New Jersey Supreme Court Rule 39. Rule 25, Pr. Act 1912).

Plaintiff moves to strike this said Memorandum of Appellees from the Records of this Court upon the following grounds and each of them:

1. The pleading or Second Memorandum is irregular, defective, scandalous, uncertain and obscene, and contains unnecessary repetitions, prolixity, scandal, and impertinence, and is so framed as to vex the plaintiff and to embarrass or delay a fair trial. (Rule 25 Practice Act 1912.)

In addition, however, it can justly be said that the said Second Memorandum constitutes nothing more than an additional overt act of the conspiracy to corruptly obstruct and impede the due administration of justice in this court and in the District Court of the United States for the District of New Jersey and continue the operations of their infernal conspiracy to the same effect as they did do in the District Court of the United States for the district of Utah. See the Exhibit photostated and filed in this Court. See Curtis vs. Utah Fuel Company et als. in Equity, U. S. Dist. Ct. Dist. of Ut.

2. A joint Memorandum has been issued, filed and served by Grover A. Giles in his official capacity as Attorney General of the State of Utah, Zar E. Hayes in his official capacity as assistant Attorney General of the State of Utah, as being associated with H. Collin Minton, Jr., and H. Brue Campbell as attorneys for said Appellees which Memorandum may it please the Court see. In the said first Memorandum the said attorneys state:

We wish to adopt and stand upon the Memorandum of appellees (etc.) They went back to the pleading filed by said local attorneys in the first appeal.

3. Whatever faults or objections they have had framed up as against the first appeal have no bearing in this appeal, because the matters and things set forth in the Complaint have been, in part, made clear and secure by the decree of this Court directing the District Court to proceed according to right and justice and the laws of the United States, and by the Decree of the District Court which Decree became final as against the defendants after the expiration of the three months' period of time for them to appeal therefrom. The present appeal is taken for the reasons and errors assigned. (Appellant's Brief, pages 95-98.)

4. A Motion to Strike the said first Memorandum has been issued, filed, and served, and now come the defendants and their said attorneys and issue, file and serve Second Memorandum and quote: . . . vilify and abuse the defendants . . . p. 2. This 2nd Memorandum has been issued, filed and served in violation of the provisions of par. 1 of Rule 27 of the Rules of this Court providing: No other briefs may be filed without special leave of the Court

5. The first Appeal in this Court is case No. 7525, October Term, 1940, and is construed by the plaintiff to be a separate and distinct proceeding. The case now before this Court is Case No. 8027, October Term, 1942, and is construed by the plaintiff to be a separate and distinct proceeding from said case No. 7525.

6. The present practice of this Court is that heretofore customarily followed in this Court. (Rule 10, par. 1 of the Rules of this Court. The practice heretofore followed in this Court is the same as in the Supreme Court of the United States, as far as the same may be applicable. (Former Rule 8 of this Court.)

7. Rule 27 of the present Rules of this Court provides: Within 30 days after the record is filed with this Court the Appellant or petition . . . shall file with the Clerk 20 copies of a printed Brief and serve five copies thereof on each opposing counsel. The plaintiff has complied with the provisions of said paragraph and the Order of this Court. (See p. 35a of Plaintiff's Brief.)

The second paragraph of present Rule 27 of the Rules of this Court provides: The Appellee or respondent shall in like manner file and serve a brief within 20 days after the filing and serving of the Appellant's or petitioner's Brief. The provisions of this said par. have been violated by the said Attorneys who now appear and file Memorandum upon Memorandum. Former Rule 24, par. 3, provides: . . . the counsel for the defendant in error or Appellee shall file with the Clerk twenty printed copies of his brief and give not less than five copies to the counsel for the plaintiff in error or appellant. His brief shall be of a like character with that required of the appellant. These said provisions have been violated by said attorneys.

Waiver: By Appellees of right to file statement opposing jurisdiction; Rule 12, par. 3, p. 10 U. S. Supreme Court Rules; of right to file Brief (etc.) Rule 38, Par. 4, p. 31; Rule 41, par. 5, p. 34.

8. The said appellees and their said attorneys failed and neglected to file any joinder of the issues (Questions Involved). See pp. 1 to 7 of Appellant's Brief. (Rule 22, Pr. Act 1912.)

9. Par. 5 of Rule 26 of the Rules of Practice of this Court provide: 5. BRIEF OF APPELLEE OR RESPONDENT—CONTENTS. The brief of the appellee or respondent shall contain the following matter, under distinctive titles, arranged in the following order.

(a) A table of contents and a table of citations, the latter alphabetically arranged.

(b) A counter-statement of the questions involved conforming to the requirements of paragraph 3 (b) of this rule, if he disagrees with the statement of the appellant or petitioner.

(c) A counter-statement of the case conforming to the requirements of paragraph 3 (c) of this rule, if he disagrees with the statement of appellant or petitioner.

(d) An argument for the appellee or respondent, which shall conform to the requirements of paragraph 3 (d) of this rule. (e) . . .

All these said provisions or requirements have been disregarded by the said appellees and their attorneys to the wrong and injury of this plaintiff.

10. (a) The district Court was not justified in striking Counts 23 and 24 of the Complaint. Appellant's Answer to Appellees (Question No. 11. See p. 1 of their second Memorandum. By reference the Court is referred to Appellant's Argument on Question XX, pp. 78-79 of Appellant's Brief.

(b) The defendant, H. Collin Minton, Jr. has been and is privy to the general plan of the defendant, Utah Fuel Company. He became so when the said defendant-company confided to him the execution of the parts of the conspiracy set forth in Counts 23 and 24 of the Complaint. There has been a considerable body of judicial expressions to the effect that each conspirator is jointly and severally liable for all damages resulting from the conspiracy. Some of them are:

Lewis v. Ingram, 57 F. 2nd 463. The attorneys were found to be parties to the general plan, and it is undoubtedly true that each conspirator is jointly and severally liable for all damages resulting from the conspiracy. McCermott, C. J.; H. B. Merienelli v. United Booking Offices of America, 227 Fed. Rep. 165. Learned Hand, D. J. (9) The complaint is not bad for misjoinder; all the defendants are asserted to be privy to the general plan, and it does not matter the execution of different parts is confided to individuals. The rules regulating original conspiracies obtain in such cases. For other cases see Monopolies, Cent. Dig. Sec. 18; Dec. Dig. Sec. 28; XX. pp. 78-79 of Brief.

d. The defendant Utah Fuel Company procured the defendant H. Collin Minton, Jr. to carry into execution the conspiracy which it had theretofore carried on with the co-operation, aid and assistance of the other defendants. The Procurer. The defendant H. Collin Minton,

Jr., with full knowledge and complete notice as by him derived from the certification of the Record of the conspiracy, the Industrial Act of the State of Utah, and decisions thereon, for moneys paid and to be paid to him by the defendant Utah Fuel Company and controlled and controlling and Associated Corporations, undertook to carry into the United States District Court for the District of New Jersey and therein present the same to Judge Forman the conspiracy so theretofore carried on by the defendant company et als. as aforesaid. Procured or Perpetrator. Any general distinction between perpetration and procurement no longer obtains. Clark, C. J. In U. S. v. Silverman. See pp. 19-20 of Brief.

11. As to the Second Question which is set forth on page 1 of the Second Memorandum of Appellees the plaintiff says:

1. (a) By reference the Court is referred to par. 9 on pp. 4-5 of Appellant's first Motion to Strike the said first Memorandum.

(b) Plaintiff's Brief generally. (c) The exceptions provided in sections 113 to 118 of Title 28 U.S.C.A. are not the only exceptions to be found in the Code of the Laws of the United States. For instance: 1. See XI, pp. 48-49 of Appellant's Brief as filed in the present appeal.

2. Title 15 U.S.C.A. Sec. 15. C. E. Stevens Co. et al v. Foster & Kleiser Co. et al. 61 S. Ct. 210, Nov. 19, 20, 1940. Mr. Justice Roberts, 1. Sherman Anti Trust Act Sec's 1, 2, and 7, as superseded by Act Oct. 15, 1914, Sec. 4, 15 U.S.C.A. 1, 2, 15.; United States vs. Cooper Corporation et al. 61 S. Ct. Rep. 742. Mr. Justice Roberts:

The Sherman Act however, created new rights and remedies which are available only to those on whom they are conferred by the Act. Citing: Wilder Mfg. Co. v. Corn Products Refining Co., 236 U. S. 165, 174, 35 S. Ct. 398, 401, 59 L. Ed. 520. Ann. Cas. 1916A; Fleishman v. Welsbach Street Lighting Co., 240 U. S. 27, 29, 36 S. Ct. 233, 234, 60 L. Ed. 505; Gedes v. Annaconda Copper Mining Co., 254 U. S. 590, 41 S. Ct. 209, 210, 65 L. Ed. 425. On p. 746. It should be noted that sec. 1 of the Clayton Act again defined the word "person" exactly as it was defined by Sec. 8 of the Sherman Act and Sec. 4 again enacted that any person injured by a violation might recover treble damages together with a reasonable attorney's fee.

There has been a considerable body of judicial expressions to the effect that Sec. 7 authorizes an action for damages only by private suitors . . . Cases cited under foot note 14. Pedcock v. Harrington, 64 F. 821, 822; Lawenstien v. Evans, 69 F. 908, 911; Greer Mills & Co. v. Stoller; General Investment Co. v. Lake Shore & Michigan So. Ry. Co. 260 U. S. 261, 280; 43 S. Ct. 106, 116, 67 L. Ed. 244 and other cases: In the Wilder Mfg. Co. v. Corn etc. supra the Court says: The statute in express terms vested the Circuit (District) Court of the United States with jurisdiction to prevent and restrain violation of this act" and besides expressly conferred the amplest discretion in such courts to join such parties as might be deemed necessary, and to exert such remedies as would fully accomplish the purposes intended. Act of July 2, 1890, Chap. 647, 26 St. at L. 209, Comp. St. 1913, Sec. 8820.

3. Chapter CLXIX (169), Sec. 30 of the Act of Thirty-Ninth Congress. Sess. II (Sec. 103 of Title 28 U.S.C.A.) is another exception. See page 56 of Appellant's Brief.

4. The law found in section 729 of Title 28 U.S.C.A. is another exception and is as good law as that which is found in the Judiciary Acts of Mar. 3, 1887 et seq. See page 83 of Appellant's Brief.

5. The Interstate Commerce Act is another exception: Title 49, U.S.C.A. Transportation. Sections: 8. Liability for violation of Interstate Commerce Act. page 6558, U.S.C.A.; 9. Remedies of persons injured by violation of Interstate Commerce Act; Section 43. Action for damages not precluded by equitable proceedings to inforce law. The defendants in the present suit have had a "criminal" (this plaintiff) in the District of Columbia and wanted to transport him to Judge Ferdinand Erickson of the defendant Utah Fuel Company and to William H. Folland, and they caused him to be transported, and he was so by them transported under guard and by train from the District of Columbia to Salt Lake City, Utah, and by said guards he was delivered to said Judge Ferdinand Erickson and said William H. Folland, and by them he was dealt with in the manners, ways, means, and tactics set forth in the exhibits as photostated and filed in this Court. They further had a criminal (this plaintiff) in the State of Utah and wanted to deport him out of the United States of North America under guard. They went to work and put him on the train again his destination to end in his home in Greece on their own made fraud. See the Photostated Exhibits as filed in this Court. (Title 15 U.S.C.A. Sections 1 to 7, et seq.)

6. The incorporators of the defendant Utah Fuel Company have had plotted to defraud the United States of America of their revenue (Internal Revenue Act. Title 26 U.S.C.A.) They went to work and embodied their fraud

in the defendant company's Articles of Incorporation where they swear that the capital stock with which the corporation will commence business was to be $1500. (SICK).

Billions of Dollars worth of coal lands, coal veins, timbers, pastures, and what not. In order to carry on this said fraud it requires the doing away with any and all persons that shows sympathy for the United States Government and who would at any opportunity expose their said plot to the Courts. (Section 103 of Title 28 U.S.C.A.; Section 88 of Title 18 U.S.C.A.) This plaintiff will prove that he suffered all the sufferings he complains because of his daring stand and devotion to the Government of the United States of America from the day of the summer of 1907, when he stepped on their lands, to this day. (18 U.S.C.A. 88. Note 1.) Construction and Operation.— "Section 37 first appears as Sec. 30 of an Act to Amend existing laws relating to Internal Revenue, and for other purposes", enacted on March 2, 1867, 14 Stat. 471, and, except for an omitted-n not relevant provision, the section has continued from that time to this, in almost precisely its present form. It was carried into the revision the United States Statutes of 1873-4 as Sec. 5440 of Chapter 5, the title of which is Crimes against the Operation of the Government, while another chapter, chapter 7 of the revision, deals with Crimes against the Elective Franchise and Civil Rights of Citizens. Forty-two years after its first enactment the section was carried into the Criminal Code (in force on and after January 1st, 1910) where it now appears as section 37 again in a chapter now chapter 4, devoted to "Offenses against the Operation of the Government", while Chapter 3 of the Code deals with "Offenses against the Elective Franchise and Civil Rights of Citizens" . . . United States vs. Gradwell, 243 U. S. 476, 37 S. Ct. 407, 61 L. Ed. 857.

See also Removal of Causes. Sections: 71, 74, 75, and 77 of Title 28 U.S.C.A. See pp. 6-7 of plaintiff's first Motion to Strike Appellees' first Memorandum.

12. As to the Third Question set forth on page one (1) of Appellees' Second Memorandum regarding the Bamberger Coal Company the said attorneys cannot now be heard because their said attempt falsifies the record of the case as well as the Decree of the District Court. See the Stenographic Transcript of the hearing on plaintiff's Motion of June 10, 1940. Page two. THE COURT: Any opposition?

THE CLERK: Any Body here in opposition? (No Answer.)

13. The letter printed on pp. 4-5-6 of said second Memorandum of Appellees is not and never was a part of the Record and shows how the said attorneys prey upon the judges to help them obstruct and impede the due administration of justice by appealing to their conscience (Note 151 on page 10a of Appellant's Brief.)

Under date of April 22, 1942, the defendant H. Collin Minton, Jr., wrote another letter to Hon. John Biggs of this Court saying My Dear Judge Biggs . . . the proper method of applying for relief is through appeal. He now says: Ergo, this Court has no jurisdiction.

14. The quotation from the Opinion of the District Court filed March 15, 1938, has no bearing on the present Complaint. That Complaint was that and the present Complaint is the present.

15. The Notice of Motion set forth on pp. 7-8-9 and 10 of Appellees' Second Memorandum is now of no avail to

the appellees. Were they aggrieved by the Decree of the District Court they should have had appealed therefrom to this Court. See Head Note of Statement of Acceptance on the unnumbered page head note to the Questions Involved page one of Appellant's Brief. By reference the facts and statutes set forth on the unnumbered page are repeated here.

And having failed to join issue as provided by par. 5 (a), (b), (c), (d), and (e) of Rule 26 of the Rules of Practice of this Court, they cannot now be heard to moan on their own deception.

The said Second Memorandum of Appellees and their said attorneys is an unusual and objectionable proceeding as will be readily seen by this Court. Each and every one of the grounds set forth above constitute sufficient basis for an Order of this Court striking the same from the Record.

Respectfully submitted by

NICHOLAS J. CURTIS, LL.B.,
Plaintiff-Appellant Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.
Room at No. 7 N. Stockton Street,
Trenton, New Jersey.

To H. Collin Minton, Jr.
and H. Brua Campbell,
attorneys of Record,
Trenton Trust Bldg., Trenton, N. J.

Dated October 6, 1942.

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On Appeal from hearings before HONORABLE THOMAS GLYNN WALKER, Judge of the United States District Court for the District of New Jersey on which decisions were reserved.

MEMORANDUM OF APPELLEES

COUNTER-STATEMENT OF QUESTION INVOLVED

Can this Court reverse or modify the action of the District Court in reserving decision on application of plaintiff

for default judgment against stated defendants who have been improperly served outside of the District?

STATEMENT OF THE CASE

The principal defendant and real object of the plaintiff's attack is, of course, the Utah Fuel Company. The some twenty-odd others named as defendants are allegedly associates and agents of Utah Fuel Company, who participated in the alleged conspiracy against the plaintiff. Insofar as Utah Fuel Company, the principal in this litigation, is concerned, the only defendants who were properly served within the State are Utah Fuel Company and H. Collin Minton, Jr., and a motion to dismiss the complaint was made in their names for the "defendant-company and its agents and associates." The fact that the phrase "defendant-company and its agents and associates" is set out six times in the motion to dismiss conclusively proves that it was filed for the twenty-odd improperly-served alleged agents and associates as well as for Utah Fuel Company, the principal, and H. Collin Minton, Jr.

(The Clerk's Certificate attached hereto shows that twenty-three named defendants who allegedly acted for Utah Fuel Company were served outside the District of New Jersey contrary to the provision of Rule 4 of the Federal Rules of Civil Proceedings.)

Subsequent to the drafting of the motion to dismiss, on special instruction from the attorney in Utah, Mr. Minton drafted a special appearance in behalf of Dr. Frederick Dunn, Dr. A. C. Callister, Dr. D. E. Smith, Charles E. Maybe and W. D. Sutton to quash service of the subpoena

made upon said defendants. The Court, however, was advised by Mr. Minton, that Mr. Minton represented all defendants not represented by other counsel, which includes all of the appellees named in the caption of this cause.

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ARGUMENT OF APPELLEES

The basis of the motion to strike the complaint is due to the impossibility of framing an answer to the complaint by reason of its vague, indefinite, incoherent and unrelated allegations and scandalous nature. The Court not having ruled on the application to strike the complaint, the matter was properly held in abeyance. In other words, on account of the factual basis for the motion made in the District Court, it would be impossible to prepare answers.

The appendix attached hereto indicates that decision was reserved on all motions of both plaintiff and defendants.

It is submitted therefore that this appeal should not be considered by this Court.

Respectfully submitted,

H. COLLIN MINTON, JR.,
Attorney for Appellees.

H. BRUA CAMPBELL,
Of Counsel.

UNITED STATES CIRCUIT COURT OF APPEALS
WITHIN AND FOR THE THIRD CIRCUIT.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
vs.
UTAH FUEL COMPANY, et als.,
Defendant-Appellees.

CASE NO. 8027.

MEMORANDUM Supplementing the Grounds of the Two Motions to Strike the Two Memorandums Herein Filed by the Appellees, and, or, Their Attorneys.

Nicholas J. Curtis, LL.B.,
Plaintiff-Appellant Appearing
in Person, P. O. Box 972,
Trenton, N. J.

Two Copies (Photostated) of Title 24 of the Revised Statutes of the United States are to be found in the Original and in the 1st copy of this Memorandum.

Nicholas J. Curtis,
Plaintiff.

Memorandum

To:

H. Collin Minton, Jr.,
Defendant and Attorney of Record,
Trenton Trust Bldg.,
Trenton, New Jersey.

I certify that I served copy of the herein Memorandum by Registered mail.

Nicholas J. Curtis.

Oct. 17, 1942.
Receipt for Reg. Art. No. 8639.

Received and Filed
Oct. 20, 1942
WILLIAM P. ROWLAND,
Clerk.

TITLE XXIV.

CIVIL RIGHTS.

Sec.

1977. Equal rights under the law.
1978. Rights of citizens in respect to real and personal property.
1979. Civil action for deprivation of rights.
1980. Conspiracy.
1981. Action for neglect to prevent conspiracy.
1982. District attorney, &c., to prosecute.
1983. Commissioners.
1984. They may appoint persons to execute warrants, &c.
1985. Marshals to obey precepts, &c.
1986. Fees of district attorney, &c.
1987. Of persons appointed to execute process, &c.

1988. Speedy trial.
1989. Aid of the military and naval forces.
1990. Peonage abolished.
1991. Foregoing section, how enforced.

Equal rights under the law.
31 May, 1870, c. 114, s. 16, v. 16, p. 144.
1 Mar., 1875, c. 114, s. 1, v. 18, p. 336.

SEC. 1977. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. [See §858.]

Rights of citizens in respect
to real and personal property.
9 April, 1866, c. 31, s. 1, v. 14, p. 27.

SEC. 1978. All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Civil action for deprivation
of rights.
20 April, 1871, c. 22, s. 1, v. 17, p. 13.

SEC. 1979. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected any Citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. [See §§ 563, 629.]

Conspiracy.
31 July, 1861, c. 33, v. 12, p. 284.
20 April, 1871, c. 22, s. 2, v. 17, p. 13.
1 Mar., 1875, c. 114, s. 2, v. 18, p. 336.

SEC. 1980. First. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any

State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. [See §§ 563, 629.]

Action for neglect to prevent conspiracy.
20 April, 1871, c. 22, s. 6, v. 17, p. 15.

SEC. 1981. Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. [See § 629.]

District attorney, &c., to prosecute.
9 April, 1866, c. 31, s. 4, v. 14, p. 28.
31 May 1870, c. 114, s. 9, v. 16, p. 142.

SEC. 1982. The district attorneys, marshals, and deputy marshals, the commissioners appointed by the circuit and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter seven of the Title "CRIMES," and to cause such persons to be arrested, and imprisoned or bailed, for trial before

the court of the United States or the territorial court having cognizance of the offense.

Commissioners.
9 April, 1866, c. 13, s. 4, v. 14, p. 28.
31 May, 1870, c. 114, s. 9, v. 16, p. 142.

SEC. 1983. The circuit courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in the preceding section; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States.

They may appoint persons
to execute warrants, &c.
9 April, 1866, c. 31, s. 5, v. 14, p. 28.
31 May, 1870, c. 114, s. 10, v. 16, p. 142.

SEC. 1984. The commissioners authorized to be appointed by the preceding section are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as

UNITED STATES CIRCUIT COURT OF APPEALS.
THIRD CIRCUIT.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, et als.,
Defendant-Appellees.

CASE NO. 8027.

Supplementing the Grounds of the Two Motions to Strike the Two Memorandums herein Filed by the Appellees and or, Their Attorneys.

Nicholas J. Curtis, LL.B.,
Plaintiff Appellant Appearing
in Person, P. O. Box 972,
Trenton, New Jersey.

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF APPEALS WITHIN AND FOR THE THIRD CIRCUIT.

Supplementing the brief statements of the grounds of the two motions to strike the two memorandums herein filed by the appellees and their attorneys, the plaintiff further shows unto your honors THAT THE DISTRICT COURT BASED ITS RULINGS ON Motions No. 2, and No. 3 on, to-wit: FORTY-NINTH CONGRESS. Sess. II,

Chap. Mar. 3, 1887, Sec. 1 . . .; and no civil suit shall be brought before either of said courts (Circuit and District) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . .

2. The district court, the appellees, and their attorneys stand, to wit: As to the second question (see page one of their Memorandum), the best argument is the ruling of the District Court, which, for convenience, is herewith repeated. (par. 7 on p. 2)

3. Section 5 of the said Act contains, to wit:

Sec. 5. That nothing in this Act shall be held, deemed, or construed to repeal or affect any jurisdiction or right mentioned either in Sections six hundred and forty-one, or six hundred and forty-two, or in six hundred and forty-three, or in seven hundred and twenty-two, or in title Twenty-four of the (R. S.) Revised Statute of the United States, or mentioned in section eight of the Act of Congress of which this Act is an amendment, or in the Act of Congress approved March first, eighteen hundred and seventy-five, entitled "An Act to protect all citizens in their civil or legal rights."

4. Sections 641, 642, and 643 mentioned in said section 5 are devoted to the removal of causes (Title 28 U.S.C.A. 71, 72, 73, 74.)

5. Section 722 mentioned in said section 5 is devoted to proceedings in vindication of civil rights (Title 28 U.S.C.A. Section 729.) See also page 3, paragraph b. of the complaint.

6. Title 24 of the Revised Statutes follows: (Please see the two photostated copies as annexed to the Original and

first carbon copy and the Title itself in the Revised Statutes.

Sec. 1977 of the R. S. is in Tit. 8 U.S.C.A. Sec. 41.
Sec. 1978 of the R. S. is in Tit. 8, U.S.C.A. Sec. 42.
Sec. 1979 of the R. S. is in Tit. 8, U.S.C.A. Sec. 43.
Sec. 1980 of the R. S. is in Tit. 8, U.S.C.A. Sec. 47.

It follows that the provisions, to-wit: And no civil suit shall be brought before either of said courts (Circuit and District) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . . shall not be held, deemed, or construed to repeal or affect the federal jurisdiction of the suit before this Court, because at the outset of the Complaint (page 3, paragraph b.) the plaintiff avers and cites that the action arises under the constitution of the United States and sets forth the particular articles invoked; U. S. C. A. Title 8, Chap. 3, Sections 41, 43, 47 (1), (2), (3). See the paragraph State of Tennessee v. Union & Planters Bank, 152 U. S. 511, 38 L. Ed. 511, 14 S. C. R. 954, on page 511, 2nd Col. the Supreme Court says: The Acts of 1887, and 1888, indeed, contain special provisions as to particular kinds of cases arising under the Constitution or laws of the United States. By section 5, nothing in this Act is to repeal or affect any jurisdiction or right mentioned in sections 641, 642, 643, 722, or title 24 of the Revised Statutes or the act of March 1, 1875, Chap. 114, all of which relate to suits concerning civil rights. See also: 722 R. S. U. S. v. Eagan, 30 Fed. 608; Malone v. Richmond & D. R. Co. Note. 35 Fed. 625, Note on pp. 629, 630, 631, 632, (Sec. 5 is here) 633; Goddard et al v. Mailer, et al. C.C.S.D. N. Y.; U. S. v. Mitchell, 136 Fed. 896.

It follows that the rulings of the district court and the defenses interposed by the appellees in this Court, and by

the defendants in the district court are utterly wrong, and shall not be held, deemed, or construed to affect the rights of the plaintiff in the suit.

The law of conspiracy (Section 30 of the Act of the Thirty-ninth Congress. Sess. II, Chap. CLXIX) 169, see page 56 of the Brief. See and read in paragraph 6 just above here. Sec. 47 of Tit. 8 U.S.C.A.; Sec. 88 of Tit. 18 U.S.C.A. Sec. 550 of the same title; Section 103 of Title 28 U.S.C.A.; and the several Articles of the United States Constitution cited in paragraph b. on page three of the Complaint apply to and govern the suit before this Court; and section 729 (R. S. 722) of Tit. 28 U.S.C.A. apparently authorizes the District Court to fall back upon the Common Law if necessary. Inch, J. District Court of the U. S. E. D. of New York, April 15, 1935, U. S. v. Olmstead, 7 Fed. 2nd, 756, and cases cited under (1); U. S. v. Wells, 163 F. 313. (R. S. Sec. 722; U.S.C.A. Sec. 729, of Tit. 28— jurisdiction . . . shall be exercised and enforced in conformity with the laws of the United States, . . . — .

7. After the statutory time has expired the right to grant an appeal (or leave to file pleas to the jurisdiction and pleas to dismiss the appeal) is extinguished. Bingham, C. J. in Standard Acc. Ins. Co. v. United States, for use and benefit of Stringville. C. C. A. 1st C. Mar. 2, 1939, 103 F. 2d. 501, (3) on page 503, citing: Hartford Accident Company v. Bunn, 285 U. S. 169, 52 S. Ct. 354, 76 L. Ed. 685. Mr. Justice McReynolds, on page 356.

• • • Passage of the three months period extinguished the right to grant an appeal. Citing: Rust Land & Lumber Co. v. Jackson, 250 U. S. 71, 76, 39 S. Ct. 424, 63 L. Ed. 250; Toledo Scale Co. v. Computing Scale Co. 261 U. S. 399.

8. • • • Passage • • • of the 20 days period for the appellees to file their Briefs extinguished the right to file

Briefs or pleas to the jurisdiction and pleas to dismiss the appeal without having first complied with requirements of paragraph 5, (a), (b), (c), (d), (e) of Rule 26, and par. 1 of Rule 27 of the Rules of Practice and Procedure of this Court. (Rules 26 and 27 C. C. A. 3rd C.).

9. The appellees and their attorneys can be heard before the Supreme Court and the Circuit Court of Appeals only in support of the decree which was rendered. Hughes Fed. Pr. Sec. 5611. Citing: Fitchie v. Brown 211 U. S. 321, 29 S. Ct. 106, 53 L. Ed. 202; Peoria & P. U. Ry. Co. v. United States, 263 U. S. 528, 44 S. Ct. 194, 68 L. Ed. 427.

10. An appellee who does not take an appeal cannot confer jurisdiction upon an appellate Court to consider on review decisions adverse to him upon questions suggested by an assignment, or by an argument of cross errors, nor can he be heard upon such questions but only in support of the order, decree or judgment below. Hughes's Fed. Pr. Sec. 5611, citing: Pauly Jail Bldg. & Mfg. Co. v. Hemphill County, 62 F. 698; Board of Com's of Shawnee County Kan. v. Hurley, 169 F. 762; Cooper v. Jewett, 233 F. 618; Lasswell Land & Lumber Co. v. Lee Wilson & Co., 236 F. 322, Cer. Den. 242 U. S. 652, 37 S. Ct. 245, 61 L. Ed. 546; Henna v. Saurl & Subira, 237 F. 145; Rogers v. Marion County Lumber Corp., 257 F. 676.

11. They cannot be heard to complain of the court below for its failure to sustain a motion to dismiss the cause. Southern Pine Lumber Co. v. Ward, 208 U. S. 126, 25 S. Ct. 239, 52 L. Ed. 420, affirming 16 Okl. 131, 85 P. 459. (Appellees' Memorandum; Counter Statement of the case, pages 2-3; Their Motion in the Court below as set forth in pages 7, 8, 9, and 10 of said Memorandum.)

It is earnestly and respectfully insisted by the plaintiff that the Ruling of the Court below on Motion No. 2, and the Ruling of the same Court on Motion No. 3 are utterly erroneous, null, and void.

NICHOLAS J. CURTIS,
Plaintiff.

HUGHES FEDERAL PRACTICE. Vol. 17. JURISDICTION. FEDERAL QUESTIONS, SEC. 19598. METHOD OF STATING JURISDICTION . . . 1.

Proper pleading of a Federal question requires that "it must appear on the record, by a statement in legal and logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the Constitution or some law or treaty of the United States." (Western Union Telegraph Co. v. Ann Arbor R. Co., 178 U. S. 239, 20 S. Ct. 867, 44 L. Ed. 1052.)

As to what constitutes a case "arising under the Constitution or laws of the United States," the test is still the time-honored definition of Chief Justice Marshal: "A case * * * may truly be said to arise under the Constitution or a law of the United States, whenever its correct decision depends upon the construction of either." Cohens v. Virginia, 6 Wheat. 264, 379, 5 L. Ed. 257.

Sec. 19599. Form of Jurisdictional Statement. Appendix of Forms. Form 2. (on page 300 of Vol. 17) . . . Thus, Form 2 attached to the present rules by the Committee shows that where jurisdiction is based upon the existence of a Federal question it is unnecessary, at least in so far as the requirements of Rule 8 (a) (1) are concerned, to allege the ultimate facts. It is sufficient in a case of this character to point to the particular act of Congress involved and show that its direct construction or application is in question "as hereinafter more fully appears". Citing Form 2 Appendix of Forms.

As to the Counts and Paragraphs of the Complaint. Federal Rule 10. Form of Pleadings. Hughe's Federal Practice. Sec. 20118. See:

Gerli v. Silk Ass'n of America et al. 36 Fed. 2d. 959 (1), (2-5) first and second paragraphs and cases cited therein; Westmoreland Asbestos Co. v. Johns-Manville Corp., 30 Fed. Supp. 389, (1-4) citing Gerli case supra;

Kuhn v. Pacific Mutual Life Ins. Co. of California, 37 F. Supp. 100, (6) on page 102-3: . . . it is at once apparent from an examination of the plaintiff's complaint, there are several causes of action to recover divers sums, predicated upon different circumstances, and each is a separate claim and cause of action;

Ingenuities Corp. of American v. Trau, 1 F.R.D. 578, (2);

Sapery v. United American Metals Corp. et al., 1 F.R.D. 106, (1) . . . the various claims made against them and the various transactions set forth are in reality parts of one alleged conspiracy and therefore as to these parties there is no necessity of a separate statement;

Lowe et al. v. Consolidated Edison Co., Inc., et al., 1 F.R.D. 559, (1), (2).

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 7929.

NICHOLAS J. CURTIS,
Petitioner,

vs.

HON. THOMAS GLYNN WALKER and HON. WILLIAM F. SMITH, United States District Judges, District of New Jersey,
Respondents.

DOCKET ENTRIES.

Jan. 23, 1942 Petition for Writ of Mandamus filed
Jan. 23, 1942 Brief & Appendix for Petitioner filed
Jan. 23, 1942 Appearances of counsel entered
Jan. 26, 1942 Notice of Service of Appellants Petition filed
Jan. 30, 1942 Transcript of Record from District Court filed
Jan. 30, 1942 Transfer to Argument List
Feb. 6, 1942 Supplement to Petitioner's Brief filed
Feb. 6, 1942 Application for Enlargement of time within which to file Assignment of Errors & Bond on Appeal filed

Feb. 9, 1942 Order extending time for Assignment of Errors etc to May 10, 1942 filed

April 17, 1942 Motion to set case for hearing filed

April 21, 1942 Heard on Motion to Set case for hearing, Coram: Biggs, Jones & Goodrich, JJ

April 21, 1942 Proof of Service of Notice of Motion to Set Cause for Hearing filed

April 30, 1942 Opinion Per Curiam filed

April 30, 1942 Order Denying Petition for Issuancce of Writ of Mandamus filed

April 30, 1942 Copies of opinion to counsel

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 7525

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
vs.
UTAH FUEL COMPANY, et al.,
Defendants-Appellees.

DOCKET ENTRIES

Aug. 19 1940 Notice of Appeal and of Motion to Waive Security for Costs filed
Aug. 19 1940 Appearances of counsel entered
Aug. 19 1940 Petition for Leave to Appeal Without Giving Security for Costs filed
Aug. 19 1940 Praecipe of Appellant filed
Sept. 21 1940 Transfer to Argument List
Oct. 2 1940 Brief for Appellant filed
Oct. 2 1940 Transcript of Record from District Court filed
Oct. 2 1940 Copies of Record from District Court filed
Oct. 19 1940 Brief for Appellees & Appendix filed
Nov. 1 1940 Reply brief for Appellant filed
Nov. 1 1940 Memorandum and Parts of Cases Material to the service of Process filed

Nov. 1 1940 Certificate of Service of Appellants brief filed
Nov. 2 1940 Notice of filing typed Memo Quoting Parts of Cases Material to Service of Summons filed
Nov. 7 1940 Argued Coram Biggs, Maris and Goodrich JJ.
Dec. 14 1940 Opinion Per Curiam filed
Dec. 14 1940 Order Dismissing Appeal etc. filed
Dec. 14 1940 Copies of Opinion to counsel
Feb. 8 1941 Certified Copy of Record & Proceedings to Nicholas J. Curtis
Mar. 25 1941 Certificate of Filing Petition for Certiorari in the Supreme Court filed
May 1 1941 Certified Copy of Supreme Court Order Denying Petition for Certiorari filed
May 15 1941 Mandate issued
May 29 1941 Copy of Mandate to Nicholas J. Curtis

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8027

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
vs.
UTAH FUEL COMPANY, et al.,
Defendants-Appellees.

DOCKET ENTRIES

May 8 1942 Notice of Appeal filed
May 8 1942 Appearance of counsel entered

May 8 1942 Petition to extend size of Appellants Brief & questions involved filed

May 14 1942 Statement of the Parts of the Record the Appellant Proposes to Print in Appendix filed

May 29 1942 Memorandum of Appellant on Appellees Certificate of incorporation filed

May 29 1942 Application to extend time for filing Appellants Brief filed

May 29 1942 Order extending time for filing Appellants brief to August 1, 1942 filed

July 6 1942 Brief for Appellant & Appendix filed

July 30 1942 Proof of Service of Appellants Brief filed

Aug. 31 1942 Certified Copy of Exhibits M and N filed

Aug. 31 1942 Statement of Appellants Costs for Photostats for Record filed

Sept. 22 1942 Memorandum of Appellees filed

Sept. 22 1942 Affidavit of Service of Appellees Memorandum filed

Sept. 22 1942 Praecipe for appearance of Grover A. Giles for Appellees filed

Sept. 22 1942 Praecipe for appearance of Zar E. Hays for Appellees filed

Sept. 24 1942 Transfer to Argument List

Oct. 6 1942 Notice of Motion & Motion to strike the Memo. of the Appellees filed

Oct. 14 1942 Notice of Motion & Motion to strike Second of the Appellees filed

Oct. 14 1942 Certificate of Service of Copies of Appellants Two Motions to Strike filed

Oct. 15 1942 Memorandum of Appellees filed (2nd)

Oct. 20 1942 Memorandum of Appellant in Support of Motions to Strike Memos. of Appellee filed

Oct. 20 1942 Proceedings of June 10, 1940 before Judge Walker filed

Oct. 20 1942 Certified photostat copies of certain exhibits & papers filed

Oct. 20 1942 List of Index of Exhibits etc. filed

Oct. 22 1942 Argued Coram: Maris, Jones and Goodrich JJ.

Oct. 22 1942 Order denying Motions of Appellant to strike the Memoranda filed by certain Appellees filed

Oct. 22 1942 Copies of Order Denying Motions to counsel

Dec. 7 1942 Opinion Per Curiam filed

Dec. 7 1942 Order Affirming Orders Appealed from filed

Dec. 7 1942 Copy of Opinion to N. J. Curtis